

**MARCH 31, 2005**

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March 31, 2005      LB 276

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK:      Good morning.      Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Reverend John Nelson Jr. from Christ Lutheran Church, Columbus, Senator Stuthman's district. Reverend.

PASTOR NELSON:      (Prayer offered.)

SENATOR CUDABACK:      Thank you, Reverend Nelson, for being with us. Pastor Nelson is from District 22, Senator Stuthman's district. Call the fifty-third day, Ninety-Ninth Legislature, First Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

CLERK:      I have a quorum present, Mr. President.

SENATOR CUDABACK:      Any corrections for the Journal?

CLERK:      I have no corrections, Mr. President.

SENATOR CUDABACK:      Any reports, announcements, or messages?

CLERK:      Just one item. A communication from the Douglas County Board of Commissioners. That will be on file in the Clerk's Office. That's all that I have at this time, Mr. President. (Legislative Journal page 1051.)

SENATOR CUDABACK:      Thank you, Mr. Clerk. We now go to General File, 2005 Speaker priority bills. Mr. Clerk, LB 276.

CLERK:      LB 276, introduced by the Transportation Committee. (Read title.) Bill was introduced on January 10, referred to the Transportation Committee, advanced to General File. I do have committee amendments pending, Mr. President. (AM0417, Legislative Journal page 561.)

SENATOR CUDABACK:      Thank you, Mr. Clerk. Senator Baker, as Chairman of the Transportation and Telecommunications Committee, you're recognized to open on LB 276.

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SENATOR BAKER: Thank you, Senator Cudaback and members of the body. LB 276 is the companion bill to LB 274, which was the recodification of motor vehicle registration statutes. This is motor vehicle title statutes we're recodifying. What I said on LB 274 applies to LB 276. I want to thank my staff, and certainly Bill Drafters. And it's been 50-some years, I think, since we've recodified titling statutes. It's overdue; highly technical in nature. I don't proclaim to know everything that's been done in here. We have handed out a series of pages that tell you what we've moved where. There's no substantive changes in the statutes. We have a trailer bill that we're holding in committee until we get this moved through the process. I have asked people not to file amendments to LB 276, for the same reason as LB 274. The trailer bills are where you can file amendments, if that's what you want to do. We had the same group of people work with us on this recodification as the registration bill. It included, obviously, Department of Motor Vehicles, the State Patrol, Omaha Police Department, Motor Vehicle Licensing Board, Nebraska Truckers, Nebraska County Attorneys Association, League of Municipalities, the list goes on and on. If we've made mistakes on this, we have a lot of company to share the blame with us. And I hope they're there if we need them. There is a committee amendment, which I'll open briefly on, which is technical in nature. If you'll look at the committee amendments, it's moving various little letters and numbers around within the base bill. So I would be glad to answer questions. I...if you want to know where various sections were and where we moved them, they are on this handout. There are 100 sections to this bill. Not quite as comprehensive or as thick a bill as maybe the registration bill was. But certainly, a lot of material in titling bill. And like I said, staff and these various interested parties have worked on this all summer. Fall, we had interim hearings on this, trying to make sure we had no mistakes. As I said, there's a few minor technical changes in the committee amendment, which I will open on in a minute. So, with that, thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Baker. You've heard the opening on LB 276. As stated by the Clerk, there are committee amendments. As Chairman of the committee, you're recognized to open, Senator Baker.

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SENATOR BAKER: Thank you again, Senator Cudaback. AM0417, as I said briefly before, is technical in nature. These are things...issues that came up of people. After the green copy was printed, we looked through things. I say "we"--staff and interested parties came up with these technical changes. We can get you answers if you have questions. I'm not going to be able to answer them on the spot, probably. But they are technical in nature. And I would ask for adoption of AM0417 to LB 276. Thank you.

SENATOR CUDABACK: You've heard the opening on the committee amendments to LB 276. Open for discussion. Senator Baker, I do not see any lights on. Senator Baker waives closing. The question before the body is adoption of AM0417, Transportation, Telecommunications amendments to LB 276. All in favor vote aye; opposed, nay. We're voting on the committee amendment. Have you all voted on the committee amendments who care to? Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: Committee amendments are adopted.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Back to discussion of the bill itself, advancement to E & R Initial, LB 276. Anybody wishing to speak to the advancement? Senator Baker, seeing no lights on, you're recognized to close.

SENATOR BAKER: Thank you again, Senator Cudaback. I appreciate the support we have here. The fun and games will be when we have the trailer bills, which make the substantive changes to all these statutes, and everybody is looking at that, saying, man, I can pile everything I can think of on there. That's going to be free season or open season on that. But this is...again, I...it's a recodification. We hope that we've done a good job. I feel confident that all the parties involved have. We put forth a lot of effort. And would ask for your

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support in advancing LB 276 to Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. You've heard the closing on the advancement. The question before the body is, shall LB 276 advance to E & R Initial? All in favor of the question vote aye; those opposed, nay. The question before the body is advancement of LB 276. Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB 276.

SENATOR CUDABACK: LB 276 does advance. (Visitors introduced.) Next agenda item, LB 4. Mr. Clerk.

CLERK: Mr. President, LB 4, by Senator Thompson. (Read title.) Introduced on January 6, referred to Judiciary Committee, advanced to General File. I have no amendments at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Thompson, to open on LB 4.

SENATOR THOMPSON: Thank you, Mr. President. LB 4 is a compact. The states, through the federal constitution, have the ability to enter into compacts with each other to achieve goals and carry out the duties of the states. And there are probably about 200 of them. The juvenile compact was put in place in the 1950s. And this is updating it, probably a long overdue update. Two years ago, the Legislature passed the adult compact update, which was Senator Dwite Pedersen's work. And this is kind of the son or daughter of the adult compact coming forward today. In 1999, through an effort of the Department of Justice and the Council of State Legislatures, and Council of State Governments, a lengthy effort was put in place to draft a new compact. This now has been passed in 23 states. It's pending in other legislatures this year. And it would bring Nebraska to the table as decisions are made for the best ways to keep information, track juveniles. And what we're talking about here is when a juvenile in your state, for example, is under the jurisdiction of the court, maybe on probation. Family is

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transferred to another state through a job. The child goes with the family. The next state is notified, and the terms of treatment and consequences that were set for that juvenile will then follow them to the next state. It also covers juveniles who have run away, who we have an obligation to return to their home state, and various other aspects of the juvenile justice system when two states need to cooperate with carrying on the treatment for the child, or returning the child to another state after they have gone to that state and committed a crime. This first agreement was in 1955. This improves the way we handle it, collect the data, settle disputes between states, and is a vast improvement over what's currently on the books. And once 35 states have adopted it, it will go forward. This would put Nebraska at the table for when those decisions are made. And would be happy to answer any questions you may have. And I think this is the time to update this compact. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. You've heard the opening on LB 4. (Visitors introduced.) On with discussion of LB 4. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I think this bill that is before us right now, Senator Thompson's bill, is a very worthy bill. But I would like to engage in a little conversation with Senator Thompson, because I have some concerns with it.

SENATOR CUDABACK: Senator Thompson, would you yield?

SENATOR THOMPSON: Yes.

SENATOR STUTHMAN: Senator Thompson, how much of a problem with the data with juveniles in other states...is there a problem now with trying to get the kids back into our communities, into our jurisdiction? Or what is the main reason for this bill?

SENATOR THOMPSON: The main reason is to update it from the fifties. And the kids...some of the issues the states were facing is that they discovered there were kids in their communities that maybe they didn't know were coming in, disputes over who was paying for the treatment once a child came into the

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community, making sure that there was adequate supervision, and also timely transfers from one state to another. And some of these things were being done kind of informally. But the...a survey was done of all the states, and a lot of problems were identified because things were not written down and there were no ways to settle disputes that may happen. And also, the data collection, tracking the kids and where they were and what kind of treatment. For example, if the court in Nebraska said this child needs six months' residential treatment, the family...there's a divorce, the person with custody is leaving the state, to make sure that that's actually carried out. So an effort was put together by the federal government, Department of Justice, using CSG to try to work out a way to get this updated.

SENATOR STUTHMAN: So, Senator Thompson, thank you for that information. So realistically, the way I understand this is, if...you know, if we can update the data, improve the system, the real people that will benefit from it would be the juveniles, hopefully, so that they can move in a fashion that won't stall them out somewhere, or they have a problem and can't continue in the process. Would that be a good estimation of what we're doing?

SENATOR THOMPSON: That would be the primary goal. And a secondary goal deals with state government, and how we are able to carry out our duties and have the other states be thinking in similar fashion, and providing information, and, quite frankly, paying their bills when the child is transferred to us.

SENATOR STUTHMAN: Yes. Thank you, Senator Thompson. I think this is very good, because of anything that we can do, you know, to hopefully try to improve, you know, the juveniles so that they can get back to society in the earliest time frame possible. You know, I think this is very good. So I truly support this bill. And thank you. And I'll return the balance of my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Stuthman. Further discussion on the advancement of LB 4? Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature,

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there has been work done on this bill, I'm sure. I was not present when the committee voted it out. And I don't fault the committee for that at all. So if you see me as not voting, it's because I was absent, which the committee statement will point out. I see this bill primarily as one to benefit the bureaucracies of the various states that deal with juvenile issues. So I would like to pose that question to Senator Thompson, before I proceed. And I would like also to make one point. If you look at the fiscal note, you will see, on page 3 of the fiscal note, the last line in the first part--it's not a full paragraph, but it's long enough to be the first paragraph--the proposed compact language concerning runaways is broader than our current language. Which means that this compact, if it's entered into, will have the effect or impact of amending existing law in Nebraska. So I would ask Senator Thompson, is a primary thrust of this bill to benefit the work of the various bureaucracies that deal with juveniles and the issues related to them?

SENATOR CUDABACK: Senator Thompson, would you yield to a question?

SENATOR THOMPSON: Yes. Yes and yes. This is to put a framework. Some of the things that were happening nationally were, some states were literally driving kids across the border and dumping them in another state. And that kind of precipitated some of the problems. It hasn't happened here. But some...you could say that it benefited the bureaucracy. But it also was a very poor way to deal with treatment for juveniles, and I think it was somewhat despicable. But that's what happens when you cheap out in bureaucracies, and they can't figure out how to pay for the services. And so the other state was obviously not happy, and spent many years dealing with the state that was doing this. And these are fairly high-population states where this was happening. I think the more important part...and it does help the bureaucracy, but the bureaucracy is there to make sure that this happens in a seamless fashion, that you don't slow down when a person is being transferred or moved or a divorce happens, to make sure the child's treatment isn't interrupted, to make sure there's...that the details are worked out for that person...the child to travel with the family, and



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also to take care of the bureaucracy's obligation of seeing that that disposition is carried out for that child.

SENATOR CHAMBERS: Don't sit yet. And, Senator Thompson, I want to ask a few questions before I begin to speak. And I'll turn on my light. If the 35 states that are required to agree to this compact through the enactment of legislation would agree, what becomes of the other 15 states which may choose not to participate? They are not bound by the compact, are they?

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Senator Thompson, will you yield?

SENATOR THOMPSON: Yes. I'm going to check on this, but I believe that they're bound by the previous compact. And so...because all 50 states joined the previous compact. And so you would have a transition. But this compact would have many advantages to it that they would...

SPEAKER BRASHEAR: One minute.

SENATOR THOMPSON: I don't know. I'm not sure.

SENATOR CHAMBERS: Okay.

SENATOR THOMPSON: Are you trying to stump the...do you know the answer to this?

SENATOR CHAMBERS: A competent attorney never asks a question to which he or she does not know the answer, but will not necessarily give that answer. Because in order for us to have the discussion, it's necessary to have some issues hanging so that people will pay attention. And I'm going to give Senator Thompson the opportunity to find the answer. And I won't ask another question now, because the time is too short. But my light is on. Thank you, Mr. President.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 59, LR 60,

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LR 61, LR 62, LR 63, and LR 64. Thank you. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, just to give a hint, one state cannot bind another state when that other state has not agreed to be bound. So if Senator Howard and I enter a contract, we cannot by entering into the contract bind Senator Thompson. If this is a proposal...and I'm not going to tell you all what it is. This is an important bill. If this is a proposal which would purport to say that 35 states can bind 15 states to something those 15 states do not agree to, those 35 states are purporting to do something that they don't have the power under the U.S. Constitution to do. There are limits to what the federal government can do in terms of encroaching on the powers of states. So states which have less power than the federal government are not going to be able to do to other states, in terms of depriving them of their discretion, that the federal government cannot do. But that's a side issue. If in fact 15 states choose not to participate in this compact, and they happen to be the states doing what Senator Thompson says this new compact is designed to present...prevent, but if under the existing compact that all 50 states belong to those negative acts can be taken, there is nothing to prevent those 15 states from doing what they want to do. Their laws are not going to be governed by what a compact with other states will have determined. When it comes to the welfare of children--and that's what a bill like this deals with--I'm not too quick to agree to go along with it when it provides convenience for the bureaucracies. If the states are squabbling about which one is to pay for a child, given that child's status, I'm not sure that adopting a compact is going to be the way to approach that issue so that equity will result to the children. The Constitution of Nebraska prohibits anybody from being transported out of this state into another state as a punishment for violation of the law. There were some groups--and I think it might have been the Department of Corrections helping to push it--who wanted to get a law passed that would allow inmates, against their will, to be put into other states. And when I pointed out what the constitution says, that effort was scrapped. This constitution that I talk about so often is the organic or basic law of this state. And its purpose is to ensure the rights of all of the people in this

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state, whether they are merely passing through, whether they are merely residents, or whether they have met the requirements to be deemed citizens of this state. Their status as human beings will entitle them to certain protections under the constitution. This is also why I'm so offended when we get offers like that one that was presented to us today...the other day, and I understand it's going to come back again, to put hunting, trapping, and fishing in this document. We don't even pay attention to it when we're dealing with serious matters of state. So I can understand why maybe a majority...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...of you all are willing to trivialize it by turning it into something that incorporates every fad and fancy that comes along. Any group that can't get what it wants put on a license plate is able to get this Legislature to put it into the constitution. I think that is unwise and undesirable. But I haven't made up my mind on Senator Thompson's bill yet. But I do have some serious questions. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion, advancement of LB 4. Senator Howard, followed by Senator Thompson.

SENATOR HOWARD: Thank you, Mr. President. And I'm going to work hard to speak more clearly into the microphone today. Thank you. I'm hopeful that I can answer some concerns, some questions that Senator Chambers may have, because, in fact, I've worked through the interstate compact with other social workers in other states. And he's absolutely right, this is a very important bill. It's very critical. It deals with children, it deals with children's rights. The way the interstate compact is designed to work is that social workers in one state can request services from social workers in another state, through the interstate compact system. In order for me to request those services from another social worker in, say, Arkansas, I filled out 100A form to generate the services, to begin those services, the request. Now, I will give you an example of how I would

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operate this with an individual child. A child is free for adoption in this state. Family members live in another state, Arkansas. They want the child to be with them for adoptive placement. We go through the interstate compact. Arkansas agrees to do a home study of the family there. We have the child in foster care here. The home study is approved. We make arrangements for the child to be placed with the family in Arkansas. Arkansas will supervise that placement. Arkansas will finalize the adoption. It's a working hand in hand of the state systems to give the child the best opportunity. So I hope this information is of benefit. I hope this answers some questions. And I will return the remainder of my time to the Chair. Thank you, sir.

SENATOR CUDABACK: Thank you, Senator Howard. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. Speaker, members of the body. I thought I would give to you some of the reasons behind this bill, and from many of the organizations that work within this area. And remember, it hasn't been updated for 50 years. And two years ago, when we passed the adult offender compact, it was part of our community corrections, ended up in the community corrections bill, because community corrections is a part of what we are doing in the changes that we are making for our criminal justice system to be more effective. And for example, this is from the National District Attorneys Association, and it says, we recognize the changes and the complexities of our society that have made many provisions of the compact badly outdated, such as community corrections, sexual predator registrations, and victim rights provisions, and the impact on how states must relate to each other in dealing with these laws. This is from the National Juvenile Detention Association, and it references the issue of who is responsible for housing juveniles found to be in violation of placement agreements or the state laws of the receiving states, and how that's an important part of the new compact language. This is from the National Center for Missing and Exploited Children. It said: Although primarily designed to assist those organizations working within the juvenile justice system and social service systems, the compact will assist the National Center for Missing and Exploited Children in its work to bring children back home by providing

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law enforcement professionals with clear guidelines and procedures once a missing youth is recovered. And I think we talked about the missing children a little bit on Senator Bourne's bill. This one is a resolution from the American Probation and Parole Association and it says, there are many unregulated practices that have come into place in the last 50 years that are not part of the compact, and that includes victim input, victim notification requirements, and sex offender registration. These are things that need to be updated in the compact. And I don't think anyone came to this need, or to revise the compact, without wanting to take the outdated language. Actually, the original compact came because of Look magazine--some of you aren't old enough to remember that, but some of you might be--and a big expose' in the 1950s on the number of kids going to beaches in other states. It was kind of a big national movement for children to go, run away, and hang out. And so they couldn't figure out, once they rounded them up, how they were going to get them back. And this was sort of the genesis of, what do we do with kids who aren't doing what they're supposed to be doing? And how do state...does one state get those children safely back home? Obviously, we're dealing with a much more complicated society--kids who have substance abuse and other mental health issues that we want to move safely to another environment with treatment. We have kids who are offenders who need consequences for those offenses to be continued in the state that they may be moving to. We have a lot of things that make the whole system work better. And, Senator Chambers, I don't mind if it works better for the bureaucracy, because if the bureaucracy works better,...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...it works better for the kids. Those things need to be updated. And it wasn't working to be under this outmoded compact from the 1950s. So this is the framework that will be put in place so that these issues can be resolved at the national level. And this would put Nebraska at the table when those decisions begin to be being made. And to get to your other set of questions, without passage--this is from frequently asked questions concerning the interstate compact for juveniles, which was written by the Council of State Governments. Without

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passage of the new interstate compact, individual states will resume addressing concerns by enacting various statutes and executive orders, and even the appearance of interstate cooperation in managing these juveniles will cease. There have only been three amendments since 1958 to the compact. And the compact will take effect once the thirty-fifth jurisdiction...

SENATOR CUDABACK: Time, Senator Thompson.

SENATOR THOMPSON: ...signs up. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Mr. Clerk, a motion on the desk?

CLERK: Senator Chambers would move to amend. (FA135, Legislative Journal page 1052.)

SENATOR CUDABACK: Senator Chambers, to open on your amendment.

SENATOR CHAMBERS: Mr. President, members of the Legislature, there is a lot of technical language in this bill. And my amendment is in the nature of a technical amendment. So if you want to look at it on your gadget, you may, but you don't have to. I'd like to ask Senator Howard a question or two.

SENATOR CUDABACK: Senator Howard, would you respond?

SENATOR HOWARD: Yes, sir.

SENATOR CHAMBERS: Senator Howard, since you've worked with the groups who have put together this compact and you understand some of the background, I'm going to ask you some questions. And Senator Thompson is not offended if I ask you, because of the work that you've done.

SENATOR HOWARD: Thank you, sir.

SENATOR CHAMBERS: So if you would turn to page 2 of the bill, the green copy, Senator Howard?

SENATOR HOWARD: Yes, sir.

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SENATOR CHAMBERS: Okay. Starting in line 7, it talks about the compacting states. They recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control, and in so doing have endangered their own safety. Suppose by running away they have not endangered their own safety. Would they come under the sweep of this bill?

SENATOR HOWARD: Yes, sir, they would, because they would be under the court jurisdiction. If they were Nebraska state wards, they would be under the jurisdiction of the Nebraska court system, and in fact had left their placement, so they would have endangered themselves simply by leaving their placement.

SENATOR CHAMBERS: Well, that doesn't in and of itself mean that they've endangered themselves. If they run away from home, would that bring them under the sweep of this bill?

SENATOR HOWARD: Yes, sir, it would. If they were wards of the Department of Health and Human Services and under court jurisdiction, it would.

SENATOR CHAMBERS: But if they were in their own home it would not apply. Is that correct?

SENATOR HOWARD: Well, you know, that would not necessarily be true. Because if they were wards of Nebraska, if they were wards of the state of Nebraska and under the court jurisdiction, but placed at home, and ran away from home to another state, I believe this would apply.

SENATOR CHAMBERS: You're aware that there have been children endangered both in foster care, public institutions, and their homes. And complaints or suspicions had been raised, and nothing was done by the authorities, and those children wound up suffering serious injury and even death. You're aware of that, aren't you?

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SENATOR HOWARD: Sadly, yes, sir, I am.

SENATOR CHAMBERS: So if a child was in a dangerous situation, wherever he or she had been placed, and had run away, that child would be escaping danger, not endangering himself or herself. Isn't that true?

SENATOR HOWARD: You're absolutely right. But what we...if I could go a little further with that?

SENATOR CHAMBERS: Sure.

SENATOR HOWARD: What would need to be looked at, in terms of returning that child from the state the child had run to, would be where the child would be placed upon returning to Nebraska. Because I can assure you that the state the child had run to would not be willing to keep the child there.

SENATOR CHAMBERS: Suppose the child had run to a relative in another state?

SENATOR HOWARD: That's a very good question. If a child had run to a relative in another state, if the state that the child had gone to would be willing to do a home study and provide that information, would be willing to supervise that child in that placement, would assure Nebraska that that child was safe, there is a possibility that the court would agree and the department would agree that child could remain there while it was, let's say, being sorted out.

SENATOR CHAMBERS: But if the receiving state--I'll call it that for convenience--didn't want to get involved, that child would be returned to Nebraska,...

SENATOR HOWARD: Yes,...

SENATOR CHAMBERS: ...under the compact. Isn't that true?

SENATOR HOWARD: ...that child would be. And chances are very likely that that state would request that child be returned to Nebraska until a home study would be completed. That would be



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prudent.

SENATOR CHAMBERS:    And the child could be returned to a dangerous situation, isn't that true?

SENATOR HOWARD:    I would not want to say that, sir.    I would want to assure you that when that child was returned to Nebraska that there would be an alternative placement.    I can't guarantee that, of course,...

SENATOR CHAMBERS:    I know that, because I'm aware of where...

SENATOR HOWARD:    ...because individual situations...

SENATOR CHAMBERS:    I'm aware of where CPS has gone into homes where a child was being abused, and took no action, and subsequently the child was harmed.    CPS--I'm talking about in Omaha now--had knowledge and did not take appropriate action.    So this compact with the language is not necessarily going to protect these children.    But here's what I wanted to ask you.    Why don't we just strike from this language, on line 11, "in so doing have endangered their own safety"?    Because that's not...well, let me ask a question.    Is it always true that a child who runs away, simply by running away, has endangered himself or herself?

SENATOR HOWARD:    The way I would answer that question to you would be, yes, because most often, these children make very bad choices when they're on the street about who they will associate with and who they will ask to give them, say, transportation to this other state,...

SENATOR CHAMBERS:    But, Senator Howard, you said "most."    "Most" does not mean "all."    So there are some in whom...who would not fit into your generalization.    Isn't that true?

SENATOR HOWARD:    Of course.

SENATOR CHAMBERS:    And what about those?    They're not endangered simply by running away.    The mere act of running away does not endanger them.

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SENATOR HOWARD: Well, sir, I understand what you're saying, and you make a very good point. However, if a child is a state ward, chances are that the decisions that they make on the run are not always in their own benefit.

SENATOR CHAMBERS: Then why don't we put in language that would say, if by so doing has endangered himself or herself? Would you be in favor of that kind of language?

SENATOR HOWARD: My question would be, who would make that judgment call?

SENATOR CHAMBERS: Whoever is going to make judgments about anything related to the welfare of this child. That issue could be presented to the court that would have jurisdiction. And it would compel them to look at the circumstances in which that child is living, which the court does not have to do now, which it does not do now. There are guardians ad litem who do not look after the welfare of these children. And these are things I'm not speculating about; I know. And I know some children and families who have been victimized because of the very things I'm talking about. Now, if we adopt this language in the compact as it exists here, it will be presumed that the mere act of running away endangers the child. That is true, isn't it, with the existing language?

SENATOR HOWARD: Well, I would...

SENATOR CHAMBERS: The mere act of running away will be presumed to endanger the child.

SENATOR HOWARD: I would agree with what you say, and I would also agree that that does endanger the child.

SENATOR CHAMBERS: Now, in line 13, on page 2, it talks about each state being responsible for the safe return of juveniles who have run away from home, and in so doing have left their state of residence. Now we're just talking about children having run away from home, aren't we?

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SENATOR HOWARD: Yes.

SENATOR CHAMBERS: Now, if they haven't done anything wrong, why should they have to be returned to their home?

SENATOR HOWARD: The children that this bill would apply to would be children who are wards of the state and under the court's jurisdiction, not a random child. That's my understanding. Those are the only children that I have worked with under this bill.

SENATOR CHAMBERS: Then why don't we strike this language, starting in line 12: "The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in so doing have left their state of residence"? That doesn't say anything about being under the jurisdiction of a juvenile court.

SENATOR HOWARD: My concern with removing sections of this would be that we need the cooperation of the state the child goes to in order to make arrangements, to work hand in hand, as I said before, with the case manager in, say, Nebraska, in our state. Because we...I can't travel to Arkansas to make arrangements to have that child in foster care in Arkansas, or to make arrangements to have that child transported from wherever shelter that child is to an airport to catch a flight out.

SENATOR CHAMBERS: Senator Howard, under this compact, what is the age at which a person is deemed to be a juvenile?

SENATOR HOWARD: An age...

SENATOR CHAMBERS: What is the upper age?

SENATOR HOWARD: The upper...

SENATOR CHAMBERS: Right.

SENATOR HOWARD: Sir, the upper limit in most states is...in many states, is 18. Here in Nebraska, it's 19.

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SENATOR CHAMBERS: So we're talking about a 19-year-old who runs away from home, maybe to get out of an abusive situation, would come under this compact?

SENATOR HOWARD: If the child is a ward of Nebraska under the jurisdiction of the court system, yes, sir.

SENATOR CHAMBERS: Does this line that I read indicate that the child is a ward of the state?

SENATOR HOWARD: The interstate compact applies to children that are wards of the state. I don't know if that particular line would apply to it.

SENATOR CUDABACK: One minute, Senator.

SENATOR CHAMBERS: And you will show me where it says in the bill that the only children affected by this bill are those who are under the jurisdiction of a juvenile court or are wards of the state?

SENATOR HOWARD: Sir, I would like to clarify that those are the children that I have worked with through the system, are the children that are under the jurisdiction of the court system and are wards of the state of Nebraska. And I've worked through this system.

SENATOR CHAMBERS: But I think we need to know, when we're adopting a bill such as this that would make Nebraska a part of a compacting state, exactly which children are going to be involved. Because it says in this fiscal note, the proposed compact language concerning runaways is broader than our current language. So it is reaching further than the existing law of Nebraska. But my time is probably up, so I won't pursue the questioning right this minute. Thank you, Mr. President.

SENATOR HOWARD: Thank you, sir.

SENATOR CUDABACK: Senator Chambers, you may continue. Your light is next. Senator Chambers, you may continue.

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SENATOR CHAMBERS: Yes, I know my time is running.

SENATOR CUDABACK: I'm sorry.

SENATOR CHAMBERS: Thank you, Mr. President. That's okay. I should have notified you. Mr. President, thank you for indulging me. Senator Howard, Senator Thompson called to my attention what I had to know, because I had to read through that to get to the questions that I was asking. And in line...starting in line 7, on page 2, it does say, under the purpose provision of Article I, "The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control." Okay. Now I'd like to ask you a few more questions. And I think I did read that earlier. I just wanted to see if people are paying attention. Senator Howard, when is a juvenile placed on parole in Nebraska?

SENATOR HOWARD: (Microphone malfunction)...to address that issue, as I did not work with juveniles on parole. I worked with adoption and foster care. So I don't want to give you the idea that I'm an expert on parole issues with juveniles.

SENATOR CHAMBERS: Okay. Thank you. Would you agree that there are things in this compact that you're unfamiliar with and cannot say exactly what the impact of the compact will have on existing Nebraska's laws, Nebraska laws, procedures, and practices?

SENATOR HOWARD: Oh, of course.

SENATOR CHAMBERS: Okay, thank you. Members of the Legislature,...that's all I'll ask you. Thank you, Senator Howard. And Senator Howard was very helpful. I cannot tell you that I can read this compact and know all of the impacts that it's going to have. This compact is similar to starting a statute with the words "Notwithstanding any other provision of law." You do give up certain prerogatives as a state when you enter this compact. I doubt that anybody would disagree as to

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the desirability of having the states cooperate on issues that relate to the welfare and best interest of these children who have gone astray and become enmeshed in the system. But one thing that everybody ought to know is that not every state deals with its juveniles the same way. And there are some states which take cognizance of race and economic status of a child's family even more than is done in Nebraska. So a child might have the designation from another state as a delinquent, a status offender, or being on probation or parole, which would not be the view taken in Nebraska. But Nebraska is binding itself to go along with that state. But before I go too far, let me ask Senator Thompson a question. And the question is this, since we're both operating from the same mike. Senator Thompson, is there anything in this compact which says that a compacting state is bound to cooperate with another state's designation of the status of its juveniles if that other state's laws are substantially...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...similar to or equivalent to those of Nebraska, or whatever the state might be?

SENATOR THOMPSON: After the 35 states get together, what they will be doing is creating the mechanisms by which they...each state is able to transfer the child and have its court continue to be assured that the treatment is going to happen. So it doesn't change how a state sentences. It doesn't state how, in this case it would be adjudicates. It's more the next steps for the juvenile, for whatever it's going to take for them to complete their treatment and the consequences that may be assigned for that juvenile. And it...and so I guess I sort of want to go back to something else you said. But...

SENATOR CUDABACK: Time, Senator.

SENATOR THOMPSON: I will on my own time.

SENATOR CUDABACK: Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. President, members of the

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Legislature. I have one question, first of all, of Senator Thompson. Senator Thompson, under this compact, if we do not join the compact, would that mean that our kids, juveniles that are wanting to go to other states, or those people who have juveniles wanting to come to this state, if we are not members, do not have to be part of that?

SENATOR THOMPSON: What it means is that if you're one of the remaining states left, you're still operating under the previous 1950 compact. And eventually, that would not exist, when it got down to one state. So things are moving. This is going to happen. This is just the transition right now. I don't...

SENATOR Dw. PEDERSEN: Thank you, Senator Thompson. Last year, maybe it was the year before, I carried a bill on the interstate compact for adults. But I'm telling you, colleagues, there's a lot of difference between the adult court system and the juvenile court system, especially in the state of Nebraska. I hope you're listening to Senator Chambers and Senator Thompson. Senator Thompson is not trying to pull the wool over anybody's eyes here. She wants to pass a bill that is going to be a benefit to the state. Senator Chambers is bringing up some issues that I think are very, very important and we need to listen to. A lot of people know I work with young people. But the young people I work with, believe it or not, are not in the juvenile court system. I don't know a whole lot about the juvenile court system. The kids I work with are being charged as adults, and they're in the adult system. Most of them are juveniles, but they're in the adult system. And there's quite a bit of difference. But I've been to court, juvenile court, many times. And I understand the word...when Senator Chambers says "enmeshed" in the system. Some of these children get into the system and can't get back out. It is an enmeshment that we need to be aware of. Guardians ad litem, if I had my way and it was the only vote in here, I would say guardians ad litem would be out of the picture. I have not seen them serve our youth well at any time. Most of the ones I have seen serve our youth, meet with the youth five minutes before they go to court, and then make a presentation to the court. The judges I've talked to said they need them. My own experience has been that they do not serve us well. Social services and the juvenile court

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system are very enmeshed in this state, and probably need to be. But we have to be very aware of what we're doing here. This is a very important bill. Senator Howard has said so, and I know Senator Chambers and Senator Thompson are working to make it that. I'm going to listen, and hopefully these people are going to come up with something that is good for our youth. And if any one of you, Senator Chambers or Senator Thompson, need more time, Senator Chambers, I'll give you the rest of the time I have here now. And I've got a couple other times to speak. You can have that time. Because I don't know much about this topic, and I really want to make sure that we make the right vote on it. Thank you.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you. And how much time do I have, Mr. President?

SENATOR CUDABACK: About two minutes...about a minute and a half.

SENATOR CHAMBERS: Thank you. The reason I raised the issue of parole--and Senator Dwite Pedersen brought it up--we have juveniles being put into the adult system. There was one kid as young as 15, I know, and maybe one as young as 14. So let's say that child got out on parole after having served four years, and is now 19, and goes to another state. That child is not going to be dealt with as somebody who violated parole, but is going to be dealt with as a juvenile, although it's not the juvenile system that dealt with that child in the first place. There are issues that exist currently in Nebraska, relative to the way we deal with children, which need to be addressed. And they are not going to be addressed. What happens here is they say,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...hire more social workers and give them more money and reduce their caseload. But nobody is looking at what they do while they're handling those caseloads. And they're not looking at what happens to these children. A lot of the children who are at the upper end of being juveniles call



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me, crying for help, and their families do, too. And I say, why don't you talk to the caseworker? Well, the caseworker created the problem. And then they threaten these children. And if you go to so-and-so...because some have been told, don't talk to Senator Chambers. Our children are not being seen after. This...if it were not for the bureaucracy, this bill would not be here. If there is a genuine concern about the welfare of our children and how they're treated, we would be enacting laws at the state level to address some of these issues...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...that go directly to these children's welfare. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Pedersen. (Visitors introduced.) On with discussion of Chambers amendment. Senator Thompson, followed by Senator Beutler and others.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. First of all, in regard to the functioning of the juvenile justice system and its shortcomings, you've heard from me many, many years on that topic. And we have made a number of changes in the Legislature. We can't solve the whole thing today. But this takes care of a piece of an issue in the juvenile justice system, where we can make the system work better, not only for the bureaucracy, but for the kids. You don't want children who have run away or absconded left in detention centers for days and days and days and days around this state because you can't figure out how to get them transferred back to their home state. You don't want their situations lingering when families are moving, when they need that connection. You don't want their processes being slowed down by bickering among the bureaucracy of the states over who's doing what, who's paying for what, and what the details are going to be. It is in the best interests of the juveniles for us to update this. This was written in the 1950s, before you had computer systems and interstate highways and ways for people to move around as well and as often as they do in our society. And it's out of date. And in recent years, there have been some

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significant problems with it. What we're trying to do is modernize and move forward and be part of the process of that change that makes the system work better for the kids, but also for the bureaucrats. And I look at Senator Howard, and I don't think...you know, she isn't the typical picture of a bureaucrat. But people on a day-to-day basis need to get these things done. And when things bog down in the juvenile justice system, they bog down for a whole lot of other cases, too. So I would encourage us to become part of this compact, which several years were spent in the development. I had an opportunity to go to a multi-day meeting with the Nebraska compact director and waded through a lot of the aspects of this, and appreciated having that opportunity. But I am not of the system; I am a layperson. But it appears to me, and I would not be bringing this bill if I didn't have...if I didn't think this was a better way to approach what we do in transferring the kids between the states, take care of the monitoring, the tracking, the payments, the things that have to happen to make sure they stay in treatment. These are kids who need help. And so with that, I would say that I believe Nebraska should be at the table with the first 35 states. If we're at the table, we'll be part of that decision making, we'll be part of the rule making, we will be able to help form what happens with that compact. If we're not at the table, we're going to be one of those states that gets the result of what everybody else wants to do. And that's why you form a compact. I think we should be leaders, not followers in this, and help shape the compact. Now, that isn't to say that the details of this bill are not important. The details are important, and they reflect the general language that is being adopted by all the states, so that we can create the framework and update the way we do business with juvenile transfers among the states. This is a good thing for children.

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: It's better than being locked into a juvenile compact that was written in the 1950s and doesn't reflect the philosophies that we have from the aspects of the system in terms of treatment, but also to the recognition of the healing process that happens when kids take...accept their offenses and make restitution to victims, for example, so...and the victims'

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rights to know where the kids are. So these are kinds of things that...it is a more modern way of addressing and helping the bureaucracy do the right things for the kids. Thank you.

SENATOR CUDABACK:        Thank you, Senator Thompson.        Senator Beutler.

SENATOR BEUTLER:        Senator Cudaback, members of the Legislature, let me address a question to either Senator Thompson or Senator Howard. And I seem to revert to certain types of questions when these compacts come up, that disturb me greatly. And basically, the reason I become disturbed is because we as a Legislature start giving away, yet again, another of our powers to make laws. And we do it in such a way that we don't even retain the strings to the extent that we logically could, but rather, not only dilute our power in terms of giving the lawmaking authority away to a compact, but further dilute our power within this state by handing over to the executive branch the appointment of a person who will go elsewhere and make laws like the Legislature does. We put into the executive branch the lawmaker. On page 11, Senator Howard, it says that this interstate commission has the power to promulgate rules which effect the purposes and obligations enumerated in this compact. And I want to come back to that. And then it says, which shall have the force and effect of statutory law and shall be binding on the compacting states to the extent and in the manner provided in this compact. Then it goes on to say, on page 26, "Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact." But if it is inconsistent with this compact, then laws that we have in place right now, that you and I passed, cannot be enforced, and are essentially no longer our laws. And I would like to come back and ask you eventually what laws will no longer be in effect? Or what laws are at risk if we enter this compact? Then in subsection 2 it says, "All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict." And then it says, "All lawful actions of the Interstate Commission, including rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states." So there, clearly, through these

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combination of provisions, there, clearly, is the lawmaking power, the statute-making power with respect to those areas which I hope we'll talk about some more, and Senator Chambers is getting into that. Therein is the...is a lawmaking...a substantial lawmaking power. And who did we hand this power over to? We're handing this power over to the compact administrator who we appoint in this state. And who appoints the compact administrator in this state? That person is appointed to serve at the pleasure...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...of the Governor, not even with the consent of the Legislature. So we have a compact administrator who is a legislator, who is appointed by the Governor to make laws that you and I in here need to bow to if we don't agree with them, except, as I understand it--and I want to explore this with you--I guess we can go back and make different laws, if we so choose. But in any event, it appears that the compact administrator is the lawmaker to start with. So my first question to you would be, as a principle of government, how do you justify an appointee who serves at the pleasure of the Governor making laws for the state of Nebraska?

SENATOR CUDABACK: Senator Howard, would you respond? I'm sorry, but your time is up, Senator Beutler. I'm sorry about that. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. I, too, am not extremely knowledgeable relative to our juvenile system. But one thing...there's been some mention of the adult interstate compact that was adopted by this body, I think two years ago, under LB 46. And a little bit that I might be able to bring to the debate is, as a practicing probation officer prior to that time, the state probation system--and I would assume likewise with the parole system--we provided the services to the offenders. We provided probationary supervision for incoming offenders. We provided supervision and sent offenders to other states with...I never experienced any problem whatsoever in terms of working collaboratively and cooperatively with other states in getting the services to the offenders.

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Essentially, then, we adopted this adult interstate compact. And we have now had to hire an interstate compact administrator, the accompanying support staff in...I think, was in excess of \$100,000. And on the front-line service, as far as probationary services, I think things, for the most part, are unchanged from prior to the adoption of the adult interstate compact, to post-adoption. So that's why I have a little apprehension relative to LB 4, from my perspective with the adult system. Senator Thompson, would you yield to a question, please?

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Yes.

SENATOR SYNOWIECKI: Senator Thompson, I'm assuming we already have a compact administrator in that apparatus?

SENATOR THOMPSON: Yes, we do.

SENATOR SYNOWIECKI: And then, that's why the fiscal note of this is relatively small, then, I would assume.

SENATOR THOMPSON: Right.

SENATOR SYNOWIECKI: In...on page 3 of the fiscal note, there's language in here which indicates what this new compact incorporates; essentially, three amendments to the interstate compact. And the fiscal note indicates these three amendments are only partially accepted by the states across the nation. Their inception was based in part on states disagreeing on compact language and how it applies or does not apply to their state. Can you articulate what the other states' reservations were relative to some of these amendments, and who the states were and what their concerns are? And, are we being asked today, then, to adopt all three of the amendments?

SENATOR THOMPSON: I'm sorry, I was unable to...my fiscal note isn't pink, so I'm having trouble finding it. So could you...is this on...

SENATOR SYNOWIECKI: On page 3 of the fiscal note,...

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SENATOR THOMPSON: Page 2,...oh, okay.

SENATOR SYNOWIECKI: ...it discusses how other states have had some reservations relative to some of the new sections of this compact. And I'd be interested to know what the reservations were, which states had the reservations and to what extent, and are we being asked to adopt the three amendments that's discussed within the fiscal note? The discussion of the reservations starts in middle of that (inaudible)...

SENATOR THOMPSON: Oh, yeah. The original compact that was passed in the fifties has been amended three times. Those are the amendments.

SENATOR SYNOWIECKI: Okay. The new compact language incorporates three existing amendments to the interstate compact on juveniles. The three amendments are...and it goes on to name them.

SENATOR THOMPSON: Right.

SENATOR SYNOWIECKI: And it says, these three amendments are only partially accepted by the states across the nation.

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: One minute.

SENATOR THOMPSON: They may not have been voted on by their legislatures. The interstate compact that was passed in the fifties has been adopted by all 50 states. The three subsequent amendments to the compact have been amended...I would have to double check, but I would assume by 35 states. So they're part...they put it in here, even though all 50 states had not adopted the amendments.

SENATOR SYNOWIECKI: What are the controversies? Because it indicates that there's reservations and controversies relative to some of the particulars of the compact. Are you...

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SENATOR THOMPSON: I'm going to have to...

SENATOR SYNOWIECKI: ...familiar at all...?

SENATOR THOMPSON: ...get the...get Howard Kensinger up here and find out what that is. That...I don't...he wrote this, I assume, from the Fiscal Office. And I'll find out what he's talking about.

SENATOR SYNOWIECKI: Thank you. Thank you, Senator Thompson.

SENATOR JANSSEN: Thank you, Senator Synowiecki. Senator Chambers. Senator Chambers, this will be your third time.

SENATOR CHAMBERS: Thank you, Mr. President. I'd like to ask Senator Howard a question.

SENATOR JANSSEN: Senator Howard, will you respond?

SENATOR HOWARD: Yes, sir.

SENATOR CHAMBERS: Senator Howard, if a child who is a status offender runs away, is that running away considered to be an offense?

SENATOR HOWARD: Sir, if a child is in the custody of the Nebraska Department of Health and Human Services, under the jurisdiction of the court,...

SENATOR CHAMBERS: Yes.

SENATOR HOWARD: ...and has adjudicated as a status offender, and does run away, that child is leaving the placement that they have been designated to, and that could be considered an offense.

SENATOR CHAMBERS: Thank you.

SENATOR HOWARD: That's a call. That's a judgment call.

SENATOR CHAMBERS: Thank you. I'm not through speaking, but I'm

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through asking Senator Howard a question. I have something else I want to proceed with, but I've got to get my thick bill book. Mr. President, members of the Legislature, if we look at page 3...the page has brought me a copy of the bill, so now I don't have to lug the whole bill book back. So I do want to express my appreciation for that. On page 3, starting in line 1, this state of Nebraska could make contracts for the cooperative institutionalization in private facilities in member states for delinquent youth needing special services. Now, if a delinquent youth is the one we're dealing with, we're talking about one who has been adjudicated delinquent. If that child runs away, we don't know what is meant by special services, whether they relate to the child's mental capacity, physical disabilities, incorrigibility, or whatever. It's just a general statement out there. But a contract could be made to institutionalize that child in another state. Senator Beutler read language which seems to exempt from the operation of this compact constitutional provisions of a state, or other compacts which may conflict. But I'm not sure exactly how that will pan out. But if you go to Article I, Section 15 of the Nebraska Constitution, which some people want to trivialize by putting in stuff like hunting, fishing, and trapping, I wanted you to listen to some of the serious matters the constitution considers. All...quoting from Section 15 of Article I: "All penalties shall be proportioned to the nature of the offense, and no conviction shall work corruption of blood or forfeiture of estate," and this is what I want you to pay particular attention to, if you will, "nor shall any person be transported out of the state for any offense committed within the state." If a child commits an offense in this state, that child cannot be transported out of this state. So if they're going to say, well, but this child has special needs so we're going to transport the child out of this state by way of a contract, they need to find out what the limitations are, based on Nebraska's constitution. All of those things can be dealt with if you adopt this compact and put Nebraska into it. But there are things in it which I think it would behoove the body to be aware of. I have a question I want to ask of Senator Thompson. Senator Thompson, which state has the most say-so in helping to determine what rules and regulations will be adopted by this compact--the first state to get on board, or the thirty-fifth?



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In other words, does a state have more or less right to input based on the chronological order in which it joins the compact?

SENATOR JANSSEN:      One minute.      Senator Thompson, will you respond?

SENATOR THOMPSON: Thank you. This is going to be an ongoing effort, so the first people at the table will be working through a lot of these issues, so if you're 35th, some of the work will already be done. You can agree with it or not agree with it or try to dismantle it, I suppose. But I introduced this bill two years ago. It wasn't advanced by committee at that point, because I guess, the statement made to me was, Nebraska doesn't like to be first at these sort of things. I always like to be first at these sort of things. So maybe it's just a personality difference here. I would want to be at the table as the decisions were starting to be made. I think that would be a good thing. Now we can be there with, you know, the 24th. Two more have passed this session, since our session started. There were 21 before the beginning of the year. We would be part of that group that is working through all this decision-making process. Once the 35 get there, they will adopt and formalize, and...

SENATOR JANSSEN: I'm sorry,...

SENATOR THOMPSON: ...then if you come in...

SENATOR JANSSEN:      ...but time is up.      Thank you, Senator Chambers.      Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Janssen. I'd give my time to Senator Chambers.

SENATOR JANSSEN: All right. Senator Chambers, you may continue with your conversation.

SENATOR CHAMBERS:      Thank you, Senator Pedersen.      Thank you, Mr. President. Members of the Legislature, we don't have to do anything today or this session on this bill. I will tell you what annoys me, may irritate me, may reach the level of vexing

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me. We will be presented with something, like a compact, which takes from us power to legislate in an area where we ought to have great concern. I'm surprised all these pro-life people who are so concerned about fetuses have not said anything on this bill. I'm upset because they don't care when the children come into the world. Now, maybe if I can put something in here about fetuses, then I can engage their minds. They blunder into a personal family affair like that Schiavo case. George Bush, the Congress, Democrats and "Repelicans," which through their unseemly, busybody meddlesomeness demonstrate why personal family medical matters ought to be kept private, out of the public domain, and not subject to political exploitation. Some people have even tried to equate the condition and circumstances of the Pope with Terri Schiavo's situation. No comparison whatsoever. Nobody knows whether the Pope said, keep me alive by any means necessary, or any means possible. The Schiavo case is different, because what is being done is to carry out her express wishes, and not just to her husband, by the way. One of her siblings heard her say the same thing, which the pro-lifers conveniently ignore. And one of her husband's siblings also heard her express that. But this is their hobbyhorse, to reenergize their dying issue and to get money. The parents of Terri Schiavo were given contributions by people to assist in whatever way that money could be used. And you know what they did with the list? They sold it to a pro-life group. And you know what that right-wing group is doing it...with it? Selling it to others, and pointing out, these are people who are pro-life to the bone. You can make appeals to them. You can enlist their...and these are the holy Schindlers and their minions who have turned that tragic family situation into something worse than a carnival. It is scandalous. It was so bad that even Harold Andersen of the World-Herald was so offended that he changed his registration from "Repelican" to Independent. There are some people who see what a terrible thing is happening. We don't know whether the Pope has expressed a wish not to be treated with feeding tubes or whatever. But remember this. He is not unconscious. He is not in a persistent vegetative state. He can state what it is he wants. So when you see these cartoons in the paper, written...drawn by these shallow people, equating what's happening with the Pope with what's happening to Terri Schiavo,

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or the enforced starvation of children in Africa--and these cartoonists have never cared about...

SENATOR JANSSEN: One minute.

SENATOR CHAMBERS: ...starving African children--with Terri Schiavo, they are exploiting a situation and showing how little respect they have for the intelligence, the critical thinking ability of the American citizenry. Why did I say all that? Because this bill deals with children who are in being, in esse as they say when you're studying Thomistic philosophy. But they are not concerned, not only about this issue, but others that relate to full-fledged children. But they can do whatever they want to. Not being encumbered by any dogmas, doctrines, or religions, I can show my concern for children, no matter who brings the bill, no matter what the issue is, or what direction it goes. I'm going to continue to try to persuade us to take seriously what we're doing and to realize that we don't know enough about this bill to adopt it at this time. Thank you,...

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Time.

SENATOR CHAMBERS: ...Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Senator Thompson.

SENATOR THOMPSON: Thank you, members. We're getting into a lot broader issues than I think what the substantive issue is today. The issue is, we have a 50-year-old compact. It's a vehicle by which we move juveniles, released from custody or on probation, across state lines. That's what it does. That's what the current compact that we belong to does. It's outdated. It's outmoded. Laws have changed. Things have changed. Lots of other things have come into place. And as a result, we're working under an outmoded system. The states came together, as they are allowed to do under the Constitution of the United States, in the first place, to deal with moving juveniles across state lines, and have now come back, 50 years later, saying, we

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need an updated compact. Nebraska stays in the old compact, we're in the old, outmoded compact. If we move to the new compact, which provides for a lot of issues that make it more effective, safer, and have better tracking, we move to the new method, then we adopt this bill and we become part of the states that are moving to the new method. Then there have been 23. When they get to be 25, we will be in a position, we will be part of the group that's moving to the new method. If you don't vote for this bill, we're part of the old team, and we don't get to be at the table as the decisions are made in the new regard. We also put our staff, who work in these areas every day, trying to figure these things out, in the old system. We keep them in the old system. This is a way to improve what we're doing, and also be part of that improvement by being in the group of 35 states that are making those changes. The system is outmoded. It's outdated. We should be moving to the new system. Now, the language of this bill is what was drafted and adopted by the people from the system, along with state legislators--and I was one of those people--who came together to try to figure out, how can we do it better? The...a lot of this has to be left to that compact effort. And it's not a bad thing that we have compacts. We have lots of compacts between states. And, yes, we do have to work together with other states. But we're talking about moving kids from one state to another for a whole variety of reasons. We're talking about encouraging that cooperation, using the best practices, making sure they get the treatment, making sure they're supervised, and making sure that the philosophies that we have behind helping them become safe, helping them get over some of the issues that they may have, either due to...maybe not due to their own fault, but maybe because of certain disabilities. That's the purpose of having the compact, because there isn't a way to do that otherwise. Otherwise, it's a separate negotiation our staff has to get into with every state. This just puts the framework in place, and it updates it after 50 years. So my contention would be, it's better to go and get on the team with the people who are moving to the new compact than it is to stay in the outmoded 50-year-old compact that's fraught with problems. Now, if that...because we're bringing in a lot of other issues about the whole...

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PRESIDENT SHEEHY: One minute.

SENATOR THOMPSON: ...juvenile justice system. And I totally agree with them. And we need to be moving on many, many levels. But as I've said on this floor before, the juvenile justice system is a series of hand-offs. It is not a system. It is police to probation, police to detention centers, detention centers to juvenile court, the court-backed private providers. There's just a hundred different players in the system who impact on a child. This is just one teeny part of that, to be able to move kids between states in a streamlined fashion, using technology, using the best information we have out there, and making it not bog down and slow down, which is worse for the kids, because we have got hung up on not wanting to relinquish some little bit of authority so that they can have a smoother process and a timely process to move them. So that's what this is about. You have two choices.

PRESIDENT SHEEHY: Time.

SENATOR THOMPSON: Thank you.

PRESIDENT SHEEHY: We'll have Senator Beutler, Senator Mines, Senator Dwite Pedersen, followed by Senator Friend. Senator Beutler.

SENATOR BEUTLER: Senator Howard, Senator Thompson, I would like to follow up on the conversation that I began before with regard to the provision in the...I want to say in the compact, but actually this provision is not in the compact. This provision is in the bill. And I assume that it would be acknowledged that with respect to who appoints our representative on the compact, that that provision can be however we decide it in the state of Nebraska; that it doesn't have to be uniform among the states; that we can make that appointment in whatever way we so choose. So going back to the fact that this compact clearly allows our representative to be a lawmaker in all those areas described on pages 2 and 3, if folks are interested in seeing what kinds of law this person can make on our behalf, given the fact that this person can be a lawmaker, I would ask each of you, and I would yield time to each of you, whether you would have any objection,

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instead of to...instead of the Governor appointing this person, to the Legislature by resolution appointing this person. Because I don't think there's a separate...I mean, there's a real interesting separation of powers question here, because this person is not only an administrator...we characterize him in the bill as an administrator, but that is a misnomer of sorts, in...to the extent that it doesn't recognize this person is also a lawmaker. And so it would seem to me that it would be more appropriate if the Legislature appointed this person than if the Governor did. So, Senator Thompson, I would ask for your impressions on that, to begin with.

PRESIDENT SHEEHY: Senator Thompson, would you yield?

SENATOR THOMPSON: Thank you. You know, it's nothing I'm going to have a whole lot of heartburn over. The current administrator is Mike Reddish. He's done it for a very long time. He's in the Department of Health and Human Services. The Office of Juvenile Services is in the Department of Health and Human Services. My hope would be the Governor wouldn't appoint...would appoint someone who is someone practicing in this area. That's the way it's been done thus far. I don't know if the Legislature knows who the practitioners are in the department, the various departments, who would be effective doing this. I think we would have to seek that out. I guess I prefer it with the Governor, but if the Legislature wants to change it, I wouldn't fight that. I think it's...it needs to be a technical person who deals with this stuff on a daily basis and has oversight and knowledge, and the Governor is probably the one who'd find that person easier than us, when we don't have the agencies to sort through. That's...it isn't...well, that's my view, I guess. I don't care if you want to do it the other way.

SENATOR BEUTLER: Senator Howard, what would be your perspective?

PRESIDENT SHEEHY: Senator Howard, would you yield?

SENATOR HOWARD: Oh, sir, that is a...that is a very interesting idea. The way this has worked in the past, when I've utilized

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the interstate compact...

PRESIDENT SHEEHY: One minute.

SENATOR HOWARD: ...process, is that there's been an individual designated to handle the interstate compact processed requests and the information that comes in from the responding state. It's really been very much a secretarial type operation. It's a paper processing. It's keeping on top of it. It's maintaining a central file, and that's been done here in Lincoln; sending the information back to the case manager that's requested it. I had no concept there was lawmaking involved, but I think that's very interesting, sir.

SENATOR BEUTLER: Senator, thank you. I'll return my time, since there's so very little of it left.

PRESIDENT SHEEHY: Senator Mines, you're recognized.

SENATOR MINES: Mr. President, I would relinquish my time to the senator from District 11.

PRESIDENT SHEEHY: Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. And the new President may not be aware of who we are by being designated through our district number, although as notorious, infamous or famous that I...that I have, maybe...or those terms might be attached to me, maybe my name and the 11th District are synonymous. But since we have the Lieutenant Governor, the Governor may not be watching, but I want to send a message to him today. He and I have been feuding. He may have thought that appointing a black person to the district court bench in Omaha, which is the first time a black person was appointed to that position, would cause me to applaud him. Well, he's right. I do applaud him. Now, to get back to the discussion of this bill, when this compact...when this group of commissioners have a meeting, Senator Thompson, let's say that 35 states, because that's the minimum number to put the compact into existence, is there anything in the compact that tells us how many of those commissioners would constitute a quorum for the purpose of

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carrying out business?

SENATOR THOMPSON: No.

PRESIDENT SHEEHY: Senator Thompson.

SENATOR THOMPSON: Not in this bill.

SENATOR CHAMBERS: So what kind of meeting will these commissioners have if they're going to try to bring about changes in the compact?

SENATOR THOMPSON: Well, the...on page 11, the commission...the duties of the interstate commission are listed, and one is provide for dispute resolution; two is to promulgate rules to effect the purposes and obligations as enumerated in this compact. So they will have to operate like many commissions do and establish their own rules for how they're going to operate.

SENATOR CHAMBERS: So, if they're going to come together to establish rules, there's nothing in this compact language that says how many of them have to be present in order to legally, lawfully, or authoritatively establish those rules?

SENATOR THOMPSON: It has to establish bylaws in its...that's on page 13: The commission shall, by a majority of the members present and voting, within 12 months after its first commission meeting, adopt bylaws that govern it.

SENATOR CHAMBERS: So, if there are nine commissioners present, five could bind the commission by adopting bylaws and doing all these other things that the commission is authorized to do. Is that correct?

SENATOR THOMPSON: Yes.

SENATOR CHAMBERS: She said yes, in case the mike didn't pick that up. Members of the Legislature, I don't know how much actual participation anybody representing the interests of Nebraska or any other state had in devising the language of this compact. Generally, that job is given over to some functionary,



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and they might look at other compacts. They might look at various laws in some states. They may go to treatises, court opinions, or wherever they can find any language that had been expressed relative to the handling of juveniles, and by doing that, if that's the approach they took, they cobble together what is before us as LB 4. Something that is of interest to me is a definitional section...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...and on page 5 they talk at the bottom about a nonoffender, a person in need of supervision who has not been accused or adjudicated a status offender or delinquent. I don't know why a definition would be given of that person if that person is not subject to the application of this compact. There are questions that I have based on the language in the compact itself. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Any further...Senator Thompson.

SENATOR THOMPSON: Thank you. We're getting a copy of the previous compact. My guess is a lot of that would be similar language. Again, this is a bill that was...reflects the language developed by the Council of State Governments, in cooperation with the Department of Justice, after a number of years of researching, sorting through the issues, and coming to a place where we needed to not have the dated, 1950 compact. This puts us in a place to move forward with the new compact. And just like lots of other things that get developed, this was a collaborative effort and this is how the language is constructed and as it's been passed in the other states, so that we can come together and make those improvements to the compact. And I got stopped before and I said we really have two choices. You can stay with it the way it was in the old compact that was written in the fifties, or we can move to the new compact, be at the table and be a part of the decisions that would be made with the new compact. Because I guarantee you it's going forward. It's a question of whether Nebraska is there or not there. Eventually, it will be like the adult offender compact. We'll have the community corrections type things, the changes of

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philosophy dealing with victims, a lot of things that are out there that have changed since 1950, including the technological changes, and we'll be part of the group of states in this country that are updating and improving the way juveniles are transferred from one state to another, something that we're going to do either way, with or without this bill. The question you have today is, do we move it to Select File? If there are issues that Senator Chambers or Senator Beutler or anyone else may have, you know I'm more than happy to work with them. But the question is, do we stay with the old system, or do we move to the new system and do we become part of the 35...first 35 states that are going to be at the table making these decisions? I think we should be progressive. I think we should be moving forward. I think we should be part of that group that's making those decisions, rather than be staying in the old compact. And I think this is a better way to approach things. I think that the fact that there have been problems and issues can...those can be ironed out and we can make the system work. But I think we should be part of the new compact. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Thompson. Also, that was your third time to speak. Any further discussion from the floor? Senator Chambers. Senator Mines.

SENATOR MINES: Thank you, Mr. President. I would again relinquish time to the distinguished senator from District 11.

PRESIDENT SHEEHY: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Mines. Thank you, Mr. President. Members of the Legislature, if you turn to page 9, and I'm mentioning that for the record, beginning in line 3, "The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying." Since the commission's determinations supersede the state law, the Nebraska laws relative to open records would be superseded. And when it comes to this commission, which has, in effect, lawmaking power over the state of Nebraska, above that of the Nebraska Legislature, their determinations of what should be public and what should

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not will prevail in this very important area. But then there's something interesting. There can be a closed meeting if it is determined by a two-thirds vote of those present that an open meeting would be likely to disclose matters specifically exempted from disclosure by statute. Well, if the commission has adopted an open information or open records provision that superseded a statute, this provision that I just read, "disclose matters specifically exempted from disclosure by statute," should have some additional explanatory language--disclose by statute, provided the statute does not conflict with what the commission has determined. Why seem to be paying court to a state's statute when based on what you're agreeing to when you join the commission...I meant the compact, that the compact's position will override the state's position if there's a conflict? Senator Thompson keeps saying the present compact of which Nebraska is a part is old; therefore, (laugh) do away with it. Senator Thompson, look at me. I'm old. And although the...a majority of the people voting for a constitutional provision want to do away with me, I'm not going to go away. So the mere fact of age is not sufficient to justify doing away with something. When Senator Thompson tells us there have been changes of a technological nature, Nebraska needs to get on board, well, you ought to find out where the train is going. Suppose a train is just barreling down the track and they tell you, we're going to stop the train right here, you can jump on it if you want to, but if you don't jump on it now you won't be able to get on it. And you say, well, where's the train going? Don't worry about that. Just get on the train and wherever it's going it will take you there and you'll wind up there. Well, suppose I don't want to go there? Well, we've got a lot of other people on the train; they're not worried about it. Why should you? Get on board now. So I guess most people in here would jump on the train. Then you come to a precipice and just before the train goes over the side you see a great humongous fire. The train is hell bound. And you jumped on that train. And you say, well, I want to change my mind now. No, you had a chance back there, but you got on the train; now wherever the train goes...

PRESIDENT SHEEHY: One minute.

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SENATOR CHAMBERS: ...that's where you go. You all have not been given compelling arguments for agreeing to this compact at this point. There are question...questions raised to which people don't have answers, but you're being asked to trust not them, who are your colleagues, by the way, but whoever drafted the language to this compact and 24 other states that have gone along with it, as though the number of people who support something will determine the rightness or wrongness of it. I wish that there was some way we could require everybody to read every page of this compact, but there is no way. So some of us have to call attention in a piecemeal fashion to one item or another item, and hope it arouses enough interest to cause you to want to ask some questions or you hope that answers will be provided, and if they're not, you...

PRESIDENT SHEEHY: Time.

SENATOR CHAMBERS: ...would be emboldened to ask. Thank you, Mr. President.

PRESIDENT SHEEHY: Senator Friend.

SENATOR FRIEND: Thank you. Thank you, Lieutenant Governor. Senator Thompson, I want to tell you right away, I wanted to let you know that in no way am I off of this train, as Senator Chambers is talking about. I'm on this train. I want this bill to pass. But I ask for the body's indulgence for another four-and-a-half minutes. Approximately an hour ago, a woman in Florida died because a feeding tube was yanked from her, a feeding tube that supplied water, supplied food. I wasn't going to bring this up; didn't feel like it was our business. But you know what? It's been my business for the last almost 20 years of my life, not out of choice. But you will have to trust me on this. You can ask me off the record. It is my business. And anybody that's curious about what that particular woman is all about, what they think she knew, what they...not those type of things--what they think she knew, what she knew--not those type of things, but what that family is going through. Folks, just let me know, anybody out there that is really interested, let me know because there's people in that family, that woman's family, that they have dreams, they had dreams until about an hour ago,

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of that particular woman for five minutes talking to them again, ten minutes. And then they wake up and they realize that's probably not going to happen. They knew that. They knew that was probably not going to happen. We can have people on the record talk about this issue. Nobody knows more about it than I do. I will challenge anyone to speak to this issue that understands more of it than I do. Have I raised my voice? Yes, I have. I'll raise it again if an issue like this comes up again, and if an issue like this comes up again I will bring legislation next year that says we will not pull feeding tubes from people in this state. We will not do it, because I know the issue. Senator Thompson, I apologize. This bill is going to pass. This amendment can be amended, and I can talk about this all day and I can talk about it all day tomorrow, and I will do it. I have nothing else to say, Mr. President. Thank you.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Friend. On with discussion. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. I'll yield my time to Senator Thompson.

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Mr. President, our current compact language is outdated and, Senator Chambers, I apologize if I said old, but it is outdated. Let me tell you what it says, and then I'm going to give you the history of it because it has to do with the history of juvenile offenders. Then I'm going to tell you that particularly girls...the language says juveniles...that the policy is declared that juveniles who are not under proper supervision and control or who have absconded, escaped or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. What happened in the juvenile system to girls in this country is disgraceful. They were detained. They were given gynecological exams because we locked them up so they wouldn't be sexually active. This never happened to the boys, as far as I know. But

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that was typical practice--protect the girls from themselves, make sure they didn't get pregnant. In fact, in the eight years I've been working on this issue in the Legislature, there are some paternalistic attitudes within the court that continue to happen. I don't want this old language in our statute anymore. I want our purpose to be much more in tune with what is actually happening out there. And the purpose of this compact is to ensure that the adjudicated juveniles and status offenders subject to the compact are provided adequate supervision and services in receiving...in the receiving state, as ordered by the adjudicated judge and parole authority in the sending state; ensure that the public safety interests of citizens, including the victims of juvenile offenders, in both sending and receiving states are adequately protected; return juveniles who have run away, absconded, or escaped from supervision or control to (sic) have been accused of an offense to the state requesting their return; make contracts for the cooperative institutionalization in public facilities in member states for juvenile youth needing special services. And there are another 20 lines. This is the type of thing the compact should come together for and to do. This is why we need to update the policy language and the ways we're going to carry this out. It is time to modernize this law and, in doing so, we work with other states trying to accomplish these same goals. This is what they're working on. And in order to do that, we have to come to the table with them, and we have to send someone there with some authority to be able to put those rules and regulations into place to accomplish these goals. If they're not accomplishing these goals, we ought to pull out of the compact. But we shouldn't nitpick, which I know it's a good thing that we nitpick, but I don't think it's a good thing that we stay with the old language. This is what's outdated, and it was put in there because of the attitude toward girl offenders and we know, and we know from the study of our own system in this state, that girls have been locked up for lesser offenses than the boys at our two facilities. We know that the system treats them differently and sometimes that's because of their sexuality. And so the language about morals in here should be taken out. It should...that is not the purpose of juvenile court. It's not to make those paternalistic decisions. Those are made through families, through our society, other places.

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SENATOR CUDABACK: One minute.

SENATOR THOMPSON: They shouldn't be in our statute. We need to get our statute modernized, to get it down to the specifics of what need to happen in the system, and I think we should join those 35 states that are going to move us forward in this regard. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. (Visitors introduced.) Senator Chambers, there are no further lights on, so I will recognize you to close on FA135.

SENATOR CHAMBERS: Mr. President, with all the discussion, I think it's appropriate that, despite the fact I said you didn't need to look at the amendment, that I read to you what the amendment would say. Add a new section: "Incidentally, notwithstanding any other provision of law, the death penalty is hereby abolished." I don't see any great outcry of opposition. You all may have realized that it's appropriate that that be done. However, I told Senator Thompson that in order to debate the issue I would offer various amendments, but for her not to panic because they're not going to be taken to a vote. But I thought I'd interject that particular one to get people's minds stirred up. To my good friend Senator Mike Friend, he sometimes mentioned that people don't speak around here with passion. He was very passionate. I understand, from things he has said on the floor and in open gatherings which are not quite as vast as this one, things that would cause him to feel he's in a position to understand this other situation, to use his term, better than anybody else. No, Senator Friend has been more willing to talk about personal family matters than others on this floor. He should not be so arrogant and presumptuous to think that something that has befallen a member of his family has not befallen anybody else. Nobody on this floor can inflame me enough to bring personal, private matters on this floor for discussion to make a point, but Senator Friend needs to be advised that he does not know more than anybody on this floor about the issue. And for him to make that arrogant, presumptuous statement could be taken to be insulting, except that if you do understand this area you know that people will

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say things when their emotions are inflamed that they do not mean to be taken in the way somebody who is not sensitive may take them. So, whereas Senator Friend might think he's arguing against foes and opponents, he may be addressing comrades in arms who are just willing to hold things closer to the vest than he is. That's just a little advice for my young friend. Back to this that we're discussing. I'm not going to take this amendment that is on your gadget to a vote, those of you who may have read it, and those who may have been put into a state of catatonic shock after I read it to you. What Senator Thompson read from the statute books is something that we need to take note of, and I have raised the issue on this floor more than anybody else, and I know because I've been here 35 years, about the disparate treatment of females at all levels, in all classes, than anybody on this floor. I took the governors to task for not making enough appointments of women, and I was the only one doing that, and now they've been sensitized. So I'm glad she raised the issue. But we could have been enacting legislation to correct those problems, but the Legislature was not of a mind to do it. The issue is raised now only because we're being asked to agree to a compact, the contents of which we not only don't understand, we don't even know. If you're going to be carried away by emotion, you will say, since it's before us now in the form of LB 4, since the Judiciary Committee, less one vote,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...advanced it to the floor, that should be enough to cause everybody to suspend their judgment, their questions and just push it across the floor. This is not one of those that I will dig my heels on and try at all costs to stop, but along the way I'm going to raise issues. I don't even know if this is one of those compacts which prohibits a Legislature considering it from offering amendments, and I don't know if those who are supporting it know that. But do you see some of the procedural questions, even, that we ought to address which we have not? Mr. President, I want to withdraw that pending amendment.

SENATOR CUDABACK: Senator Chambers, the amendment is withdrawn.



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Mr. Clerk, next motion.

CLERK:    Mr. President, Senator Beutler would move to amend with FA136. (Legislative Journal page 1052.)

SENATOR CUDABACK:    Senator Beutler, to open on FA136 to LB 4.

SENATOR BEUTLER:    Senator Cudaback, members of the Legislature, this amendment goes to Section 2 on page 27 of the bill. That section says right now that the person who will represent us in making laws in this new compact is appointed by the Governor and serves at the pleasure of the Governor. And what I want to do is to change that provision, and I'm going to have to do a little more than I've done in this amendment, but the basic concept is to change this amendment so that the person who represents us in making laws there is appointed by resolution by the Legislature, and the reason I'm doing that is very simple. This commission, this compact, is not anything like the previous compact, except in its vague resemblance to a particular area of law. That compact was, relatively speaking, very, very simple and it outlined carefully a certain circumscribed set of procedures that would be followed. It did not empower this group to make new statutes and new laws, and to make new statutes and new laws that would...that would be...that would be trump, that would trump any laws that we had that were in conflict in any way with those laws. So it is a lawmaking position and, in that regard, I think, then, that it makes sense that whoever that person is, that they are the most directly responsible to us as they can possibly be. And I would rather have Senator Bourne and the Judiciary Committee and Senator Jensen and the Health Committee getting together and looking at the kind of expertise that's needed, and looking at the kind of judgment that's needed, and looking at the loyalty of this person to the Legislature and not to the Governor, and having that person be a person of our choice. So that's the...that's the basic recommendation to you. I read to you before all those provisions that make it quite clear that any of their bylaws, any of their rules, anything they do, so long as it doesn't conflict with our constitution, with our state constitution--it can conflict with any of our statutes--that's going to be the law. And in that regard, I wanted to ask Senator Thompson about

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another provision of the bill, because it's not entirely clear to me how we get rid of a law if they make one that we don't like. And when I look at page 18 of the bill, Section E, that seems to be the dominant provision or the ruling provision, but I would be subject to correction here. But what it says is, "If a majority of the legislatures of the compacting states reject a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state." What it seems to be saying to me is, you're stuck with this rule unless you do one of two things. Unless you develop some sort of cooperative effort with a majority of the other states in some kind of process that's aside and beyond the process that we're setting out here, unless you can get them all together in a majority and reject it and all pass statutes rejecting a particular rule, then that rule is going to be in full force and effect. Now that's a very cumbersome, awkward process for rejecting a rule, I think you would agree, and so it behooves us to be sure that our representative and the rules that are in place are as agreeable as possible to us and as much in conformity with our existing statutes as possible. And then the other alternative if you don't like a rule, I guess, is you can just withdraw from the compact. But Senator Thompson has stated the reasons why it's not a good idea to get... to leave the compact. That's a...that's like a killer remedy. There are going to be some things that we object to, I think, that maybe we want to change, but who wants to be faced with an all-or-nothing decision of getting rid of the compact as opposed...as a way of dealing with a particular rule? So if there are additional ways of objecting to a rule that we don't like, I would invite those to be pointed out. But the difficulty of getting rid of a rule, the dominance of the rule, the fact that this compact is so different from the previous one in the sense that this is a lawmaking compact, a lawmaking commission that we're establishing, it seems to me, then, that we should put somebody who directly represents the lawmaking branch of government into that position as our de facto representative. So that's the purport of the amendment and I would recommend it to your attention. Thank you.

SENATOR CUDABACK:      Thank you, Senator Beutler. You heard the

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opening on FA136 to LB 4. Open for discussion on that motion.  
Senator Thompson.

SENATOR THOMPSON: Senator Beutler, just a technical thing. Did you want in your amendment to say "legislator," "Legislature," or "legislative," or am I just misreading it?

SENATOR CUDABACK: Senator Beutler, would you respond?

SENATOR BEUTLER: Senator Thompson, I'm sorry. What did...I didn't hear your question.

SENATOR THOMPSON: Well, I'm just, on this particular amendment of changing it from Governor to "legislative, by resolution," do you mean...or am I misunderstanding what that is?

SENATOR BEUTLER: It should say...it should say, Senator,...

SENATOR THOMPSON: Is it a handwriting issue or...(laugh). Okay.

SENATOR BEUTLER: ..the Legislature,...

SENATOR THOMPSON: Okay.

SENATOR BEUTLER: ...by resolution. Is that...is that your question? I'm sorry, I didn't...

SENATOR THOMPSON: Yes.

CLERK: Yeah, Senator, if I...

SENATOR BEUTLER: Yes.

CLERK: ...just forgive me, but we, in construing your handwriting, we originally put "legislator" and we've now fixed it to say "Legislature," which I think is what you want. Is it not?

SENATOR BEUTLER: Mr. Clerk, my handwriting is perfectly clear (laughter) to almost...

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CLERK: You're absolutely right, Senator, it is.

SENATOR BEUTLER: ...everybody.

CLERK: It's just...

SENATOR BEUTLER: You can ask my staff. (Laughter)

CLERK: It's my one eye, Senator, that's bad. It's...

SENATOR BEUTLER: Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Thompson, you're...

SENATOR THOMPSON: Well, I'm just...to the Beutler amendment, I don't have a problem either way. If the Legislature wants to change it to the Legislature rather than the Governor, that's fine with me.

SENATOR CUDABACK: Are you through, Senator Thompson? Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I will support this amendment. If anybody else wants to offer amendments that are designed to smooth out or make clear what this compact is about, or to try to salvage for the Legislature some of the prerogatives it ought to have, I will support those amendments, too. But this is not my bill. Had I been present when the Judiciary Committee took their vote, I would have voted no. There was just not enough known or understood. You don't see any members of the Judiciary Committee standing up here explaining why they voted to send the bill out here. Why not? Because they don't know. They don't know what's in this compact. And I'm not going to embarrass any of my colleagues in the committee by asking them to explain this compact that they voted to send out here. You know what I will tell them when I'm there and there's a bill I don't like? You've got the votes to send it out there so I'm not going to fight in the committee, I'll just vote no; but on the floor, that's where my fight will

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be. And when those kind of bills come out, if I deem it necessary, I will go around to individual committee members and question them about the bill and why they supported it. And then if they can't give answers, it will cause you to kind of consider what kind of committee is this. Is no winnowing going on? My former colleagues will understand what winnowing means, and smart alecks like Senator Landis will understand, too. I saw him look up. I have little tests that I drop on my colleagues from time to time to see if they're paying any attention at all. But what Senator Beutler is offering with his amendment is exactly what he told you, and for the rationale that he gave, based on that, I'm going to support his amendment. It's unfortunate that there is not enough time to really go through this compact and lay out all of the problems and proposed amendments. But again, not being thoroughly familiar with it, I cannot tell you to what extent the language of this compact allows a state to modify the version that it is going to agree to. I'd like to ask Senator Thompson a question. Senator Thompson, this bill defines, on page 5, a nonoffender. If this bill relates only to adjudicated status offenders, juveniles and whatnot...okay, going to page 2 in line 9: "juveniles, delinquents and status offenders who are on probation or parole." Why would we define a nonoffender who is not on probation or parole and may have run away? Why an accused delinquent who is not on probation or parole? Why an accused status offender who is not on probation or parole or under anybody's jurisdiction? Why define those in the bill if the bill does not relate to them? And if the bill relates to them, where? And when I say the bill, I mean the compact. And it might catch you off guard, so if you don't have it right at your fingertips...okay.

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Senator Chambers, these are the definitional portion of the bill...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...and we'll do a word check run and find out where they're...they're mentioned someplace else. But the

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governing language is the first language you read...on each state is responsible for the supervision of them. And this is the definitional and we can search the...we are...we, I always say we, that's my legislative assistant, is going to find out where in the bill those other words are used, because they're defined for a purpose.

SENATOR CUDABACK: Senator Chambers, 20 seconds.

SENATOR CHAMBERS: Just enough time to say thank you, Mr. President. Thank you, Senator Thompson.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Schimek, on the Beutler amendment.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Beutler, before I know how to vote on your amendment, I need to see if you can help me with a little background here, if you would. I know how the Midwest Interstate Compact...Rail Passenger (sic) Compact works because I served on that commission, and we had two people appointed by the Legislature and two people appointed by the Governor, because there were up to four commissioners allowed, so we sort of divided it, even though I...

SENATOR BEUTLER: You sort of what? I'm sorry.

SENATOR SCHIMEK: Divided it.

SENATOR BEUTLER: Divided it.

SENATOR SCHIMEK: Even though, I suppose, you could say that those were more in the legislative vein than the administrative vein but I don't know that there's a lot of legislating that went on, either. I don't know how the compact that we had on low-level waste was. I believe it was the Governor who appointed those people, and was there approval by the Legislature in that case?

SENATOR BEUTLER: In that case I don't recall, Senator.

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SENATOR SCHIMEK: Probably there should have been.

SENATOR BEUTLER: We can look. We can look quick and see.

SENATOR SCHIMEK: What I'm getting at is this is a little bit different kettle of fish, in a way, because you have somebody who is an administrator, technically, but also could be considered legislator. And I'm just wondering. I'm assuming this person is our only representative on the compact.

SENATOR BEUTLER: That's right.

SENATOR SCHIMEK: So, in a sense, as I heard somebody talk about earlier, they have divided, kind of, activities that they do. Is there any...is there any precedence for having an administrator that's part of the executive branch of government appointed by the Legislature?

SENATOR BEUTLER: Senator, I don't...I don't know if there's any precedent. This bill is new to me. But also, this kind of bill is becoming a kind of precedent, because the low-level compact, for example, it didn't create a bunch of power in terms of ability to make laws. It was administrative. You know, you can be in this compact and there you can work with the administrative detail of locating a waste site and developing it and that sort of thing, but all of that was set out in the compact. We...

SENATOR SCHIMEK: Even when our representatives were voting on things like...

SENATOR BEUTLER: Well, not on...not on the details, but not...but they weren't making policy, as such. I mean this bill, Senator, if you look on page 2 and 3, and recall...am I taking too much of your time? I will...I can do this on my own time.

SENATOR SCHIMEK: No, that's okay. I don't need my time, particularly. I just want information.

SENATOR BEUTLER: Okay. If you recall, and I'm sure you do,

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what we discussed earlier with regard to the dominance of what they do here, the fact that it operates, if in conflict with our own law, as the dominant law and our own law is void. And then you start looking at all these different areas that they can deal in and make rules and regulations about. Give some thought to some of these areas. It goes from line 20 on page 2 all the way to the bottom...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...of page 3: ensure that the adjudicated juveniles are provided adequate supervision and services, so that, you know, anything that's problematic with regard to adequate supervision and services they're going to have control over; ensure that the public safety interests of the citizens, including the victims, in both states are adequately protected. Well, does that mean they can make victims' rights laws? I assume it does, for example. Or maybe does it mean they can make criminal laws? Says, return juveniles who have run away, absconded or escaped from supervision or control. That's not as problematic.

SENATOR SCHIMEK: And I see other things that aren't problematic from your perspective as well, Senator Beutler. So again, it's a mixed bag.

SENATOR BEUTLER: I think it's fair to say it is a mixed bag.

SENATOR SCHIMEK: So I guess what I'm getting at, is there anything constitutionally with our taking on this responsibility of appointment?

SENATOR BEUTLER: I don't think so, although the situation is so new you could always argue about it.

SENATOR SCHIMEK: Yeah.

SENATOR BEUTLER: I mean, I...these compacts...and you've heard me argue this before, they become...there are more of them, they're becoming more complicated.



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SENATOR CUDABACK: Time, Senator.

SENATOR BEUTLER: You may recall that last year we gave away our...

SENATOR CUDABACK: I'm sorry, time is up. Thank you, Senator Schimek. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, in trying to help compile a legislative history, I want to go to page 27 and read the language in lines 5 through 14. Because this would have a direct bearing on what the Nebraska Supreme Court has ruled; namely, that the Legislature cannot delegate its power to legislate for the citizens of this state to any other entity, person, or whatever. So if anything that this compact does is deemed to be legislating in derogation of the authority of the Nebraska Legislature, would not have any effect, anyway. And they seem to be acknowledging that in lines 5 through 14 on page 27, which I will read now: "In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective." Not only does that seem to be acknowledging that in Nebraska, where the court says we cannot delegate our authority to legislate, if we have delegated certain powers for rule making and so forth to an agency, the power of that agency cannot be done away with, either. So if there's a juvenile agency in this state that deals with these issues, the compact will not override what they're doing, either. That's what it seems to be saying in this language. But when you read the actual requirements and you might say the active ingredients of the compact, those terms override what I've just read. So it's a ball of confusion. The people who put this together said we'll put something in for everybody. If it's contradictory, let them go to court. Let a court say it's contradictory. Then we'll worry about what to do

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if any court in a given state strikes something down that the compact attempts to impose on that state. Then other states would say, well, if they're not going to have to live up to all this, I'm not going to live up to it, either. Did you say time, Mr. President? Oh, okay.

SENATOR CUDABACK: Did not.

SENATOR CHAMBERS: I'm not going to live up to it, either. There are so many issues that the ones who put this language together should have dealt with that they did not deal with. There are so many issues that the committee should have dealt with which were not dealt with before this bill was put out here. I don't see a committee amendment. I don't see a person in the committee speaking to explain. And all I, as a committee member, can do is ask the same questions that I had in committee. But I didn't know that this bill would be put out here, but here it is and we have to deal with it. And I'm not going to agree to just move it along just to be friends or friendly. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the Beutler amendment, FA136. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I just turned my light on so Senator Beutler and I could continue the discussion. And, Senator Beutler, I don't know if you had any more that you wanted to say.

SENATOR CUDABACK: Senator Beutler, would you like to respond?

SENATOR BEUTLER: I did, but it's been such a long time since we talked that I forgot it.

SENATOR SCHIMEK: (Laugh) I did, too. (Laugh) Okay. Well, then I guess I'm still thinking about this, and I get your point and I think that we should have some control here. But I also wonder about the section that Senator Chambers just read into the record, and I wonder if that trumps some of the language earlier in the bill, because it comes last. And I wonder if it trumps that, and if we're worrying needlessly about what this

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court or this administrator can do or can't do. I don't know and I would...maybe...

SENATOR BEUTLER: You want me to tell you what I think Senator Chambers...

SENATOR SCHIMEK: Yes, please.

SENATOR BEUTLER: ...was doing?

SENATOR SCHIMEK: Yes.

SENATOR BEUTLER: All right. I think Senator Chambers was trying to make a record that any law that this compact passed that conflicted with our statutes would be declared...he's inviting the court to declare them null and void for the reason that you cannot, under some old rules, delegate the lawmaking authority to anybody else. So he wants to make a record saying to the court, step in here and strike down anything that's going to be...conflict with our statutes. But I don't think that's what the court would do. What the court would say is you, Legislature, pass this bill giving the right to make laws in this area to somebody else, and we've been doing that more frequently. You know, we essentially, in a much smaller way, let the director of Insurance earlier this year make laws with regard to certain types of insurance policies. I think what they'll say is let...if the Legislature, through a compact, delegated that authority to somebody else, they can do that. Otherwise, if they didn't say that, then the only kinds of compacts there could be would be compacts that were strictly administrative in nature and which set out in total clarity that which they were to administer in the compact itself. And obviously that would be a very limited form of compact, which has been the experience of the states in the nation to date. We...but we're continually experimenting with broader, deeper compacts which have the result of removing authority from the Legislature. I mean, not only does the federal government keep taking authority away from us, but then we give it away in an effort to be cooperative, which is a good purpose, generally. And so this is all somewhat new territory, I think.

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SENATOR SCHIMEK: Well, and not being familiar with the old compact, which I'm not, I mean I don't know off the top of my head how much broader and deeper this is than what was part of the old original compact. But, Senator Beutler, I would give you the rest of my time, because I don't have any more questions at this time, if you would like to take it.

SENATOR BEUTLER: Senator Schimek, I think the questions are good questions. I have nothing to add at this point, except to remind you again, we leave it in our own hands. What's wrong with that?

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: It's a power that has been in our hands and should be in our hands still, I think.

SENATOR CUDABACK: Senator Beutler, your light is next, if you wish to. He waives the opportunity. Following Senator Beutler was Senator Thompson. Senator Thompson, you're recognized.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. Just to review with you, the people who worked on making this compact change understood the difficulty of where to start. If you had put all the rules of the compact into state statute, that was a burdensome task legislatively for approval of all of those. So they felt the best way to manage the movement of juveniles is through an enforceable compact between states that results from member states in an ongoing participative process for administrative and rule changes. And that's why this is set up differently than the previous one. And they said, you know, you can't...you can't do both. You have to start with one or the other. The view of the people who worked to make this change, which is definitely needed--I don't think anyone has disputed that--felt it would be most effective to create it through this commission, this national commission. There are ways for the states to opt out of any rules made by those commissions. Article V says if a majority of the legislatures of the compacting state reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule shall have no further effect. Article X says

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amendments to the compact may be proposed by the interstate commission for enacting by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until the enacted amendment is enacted by unanimous consent of the compacting states. And Article XI states a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law. There are ways, ways to step out of this. But again, I think we're missing the bigger issues, including the fact that a lot of the old compact was done before there were open meeting laws, and the new compact will develop rules that, if not identical to the old rules, as written, the new compact states that existing rules governing the operation of the Interstate Compact on Juveniles will be null and void after 12 months from the first meeting, and then they'll be able to put the new rules in effect. This isn't unlike any other board or commission. In fact, we have a lot...this...but this is a compact among the states, where we're trying to do a better job of taking care of those administrative problems that may slow down movement of juveniles, that may not...result in not having their effective treatment, and, to get down to the brass tacks of what often goes on, arguing about how the bills are going to be paid. And this is a way to improve those processes. It's not rewriting juvenile codes. It's dealing with an administrative aspect when a child moves from one state to the other or has absconded and moves from one state to the other, and puts into place a mechanism by which the states can manage that. It's a management tool. It's not getting into policy beyond the intent to deal with the administrative problems and the management of the movement of juveniles. So that's what this is about. It is detailed. I've sat on the floor and voted on bills that had three or four hundred pages of regulations that someone else wrote and worked with. We occasionally go into those and make some changes here and there. This isn't an odd process. It wouldn't be odd, I don't believe, for the Judiciary Committee to advance it because this was developed by a process and this has been the language that's been adopted in...

SENATOR CUDABACK: One minute.

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SENATOR THOMPSON: ...23 other states. So here we are and I'm willing to...we can make adjustments, but we probably--and I have that language on another page--have to take the substantive portion of how this is governed in order to make it work and for us to be accepted into the compact. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. On with discussion of the Beutler amendment to LB 4, Senator Pedersen, Dwite, that is. I'm sorry.

SENATOR Dw. PEDERSEN: Thank you, Senator Cudaback, members of the Legislature. I am on the Judiciary Committee and I must confess I was not aware of all the stuff in this bill. I did not read it that closely. When it said interstate compact, I actually compared it to the one we had, an adult compact, and I'm finding out it's quite a bit different. I've been listening very closely and I really do appreciate the time that you people are taking on this and wish that I had more to contribute towards it. If I can give my time to anybody that can keep going on it, I'd be more than glad to give that time to Senator Chambers. Thank you.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Pedersen. Thank you, Mr. President. Article III of the Nebraska Constitution deals with the powers of the Legislature, and if you ever want to look into what the constitution is, you can go to Volume 2, which is Chapters 24 through 26, and along the bottom of the spine will be the word "constitutions," talking about the U.S. and the state constitution. But when you get to Section 1 of Article III there will be little notes from cases that have been divided by the Supreme Court interpreting that provision of the constitution, and it will give what it considers, the one who's writing the note, the part of the case that relates to that particular section of the constitution, although the case itself may encompass and embrace more. But there was a case, School District 39 v. Decker, at 159 Neb. 693. Now this relates to what happens within the state. In the absence of adequate standards, delegation of rule-making powers to superintendent of public instruction was unconstitutional. Now this is just

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rule-making power, not statutory authority to repeal or supersede a statute. Going to another case, Board of Regents v. County of Lancaster, 154 Neb. 398, the Legislature can delegate to administrative agency the power to make rules and regulations covering the details of the legislative purpose, which means the statute that grants that rule-making authority must declare what the purpose is and give guidelines and limitations as far as the rules that can be adopted and the manner in which they must be adopted. Then here is a broader statement relative to the power or lack thereof of the Legislature. It's in Smithberger, S-m-i-t-h-b-e-r-g-e-r, v. Banning, B-a-n-n-i-n-g, 129 Neb. 651. The Legislature may not delegate legislative powers to an administrative board or to any outside agency, such as the United States Congress. What is being attempted in LB 4 is to delegate some legislative authority to a group of other states. And the point I tried to make earlier, if there is something that cannot be done by the federal government, it cannot be done by a group of states, as far as the power of an individual state. So if you're insistent on going through with this, I'm going to take the time from other matters that I'm working on to go through and eliminate every provision that I think conflicts with or seeks to limit the power of Nebraska's Legislature, and I will offer amendments to strike those provisions from this compact before you enact it. Why would that be done? If any provision in it...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...which is unconstitutional would not be upheld by the court anyway, we have a responsibility as a Legislature to not give our approval to something which is not constitutional, then later on, when it becomes inconvenient, say, well, that violates our constitution so you can't hold us to that. Any of the other compacting states could have said...could say, well, why didn't you say something about that when you were considering it as a Legislature? Why didn't you strike from this compact what you could not go along with? Then a determination could be made whether you were in opposition to so much of it that you cannot be considered a member of the compact. I am not going to agree to let the Legislature put its approval behind something like this without attempting, to the

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extent that I can, to bring it closer to what might be constitutional for this Legislature to do. Thank you, Mr. President.

SENATOR CUDABACK: Senator Chambers, it's now your time, Senator. It is now your time to speak.

SENATOR CHAMBERS: Oh, thank you. I didn't have to rush quite as much. This is the point that I wanted to get across. If you sign a contract, you are bound by that contract. If there was a meeting of the minds, if there was consideration given, and that can be a promise for a promise, I oblige myself to do certain things to your benefit or take on certain obligations that are to my detriment in order to get you to agree to this that we're talking about and we have to be able to show that we both see what we're agreeing to the same way. Your signature to a contract can be...create a presumption that you know what's in here and that you went along with it, unless it's what they call an adhesion contract where one party has so much more power than the other that the other is put into a take-it-or-leave-it position and has no chance to modify the contract, but is in a position, nevertheless, of being more or less coerced into having to go along with this. Those adhesion contracts are considered illegal. When it comes to what the Legislature can enter into, it's not likely that any court would say that it's an adhesion contract or the Legislature was overreached. The Legislature is able, collectively, to consider what it's going to obligate its state to do or to refrain from doing. Those other people who will agree to this language are entitled to think that Nebraska, through its Legislature, thoroughly reviewed this language and found it acceptable, or they're entitled to believe that Nebraska had the opportunity to do so whether they took advantage of the opportunity or not. I get hung up on a lot of these bills which are not my bills. But when it comes to binding the Legislature, and I'm a member of the Legislature, I feel an obligation to the institution to not let something like this go across the board and receive the approval of the Legislature if there are things in it which I'm convinced go contrary to what the Legislature may constitutionally agree to. This Legislature, based on what the courts have said, cannot agree to give up its power to



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legislate. It cannot do that even if it wants to. Now, the Legislature can refrain from exercising that power. Nothing demands that the Legislature act on every issue it is authorized to act on. There's nothing that would prevent the Legislature from refraining from acting on that which it has the power to act on or refrain from acting on. This compact is something that the Legislature should thoroughly consider, and the Legislature does not comprise Senator Beutler and Senator Chambers. An argument which says go along with this because the present compact of which Nebraska is a part is outdated, outmoded and so forth, that is not an argument for getting on to this one. That might be an argument for getting out of the other one. But there are two issues there. One is to get out of a condition or a circumstance which is undesirable. The second independent issue is whether you ought to get into a different set of circumstances through your affirmative vote. You don't have to get into this new one in order to get out of the old one. Just get out of the old one if it is so objectionable. But there is nothing that says a condition to getting out of the old one is that you...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...must get into this new one. If you're in a bad situation, consider carefully before jumping into another one which may be equally bad or worse. The analogy I have made is of a person in a situation where there's domestic violence. The person may feel compelled to stay there because outside of it is something worse. But that person would not voluntarily jump out of that bad situation into an equally bad one just because it's going to be done at the hands of a different person. Thank you, Mr. President. By the way, was that my third time?

SENATOR CUDABACK: That was, Senator.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: Senator Thompson, and this will be your third time, Senator Thompson.

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SENATOR THOMPSON: We are...thank you, Mr. President, and we're on the Beutler amendment, but we're straying beyond that and so I'm having trouble not getting to some of these issues that are being brought that are probably extraneous to his amendment. But there is...this is a purpose that we should be getting to. We have problems that exist in the current compact, and we need to improve that compact. And the powers and duties of the interstate compact are on page 11 of your green copy. It's Article IV, and it provides for things like maintaining an office within each of the compacting states, a central place to do it; maintain insurance and bonds; contract for personnel. Those are some of the things. The bigger pieces are provide for dispute resolution among compacting states, which is very important; promulgate rules to effect the purposes and obligations as enumerated in this compact, and the purpose of the compact is for the states responsible...to be responsible for proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and, in doing so, have endangered their own safety or the safety of others. They also are recognizing that states are responsible for the safe return of juveniles who have run away. We are obliged to do that. And those of you who are county commissioners probably remember some of the discussion in those days of what counties are obligated to do. And, through joint and cooperative action, to ensure that adjudicated juveniles and status offenders are provided adequate supervision and services in the receiving state, as ordered by the adjudicated judge or parole officer. Let me give you a few examples of things that have happened that precipitated the need for this. A 17-year-old juvenile parolee serving a sentence for burglary and armed with a dangerous weapon absconded from state supervision. The sending state issued a warrant for his arrest and extradition. One month later, the juvenile was picked up in another state for a minor traffic violation. The receiving state detained the youth in a detention center for juveniles, and sent a note to the state's home state with details of his detainment and a request for transportation. Disagreements between both states over transportation payments ensued. Meanwhile, the local jurisdiction holding the juvenile ignored the interstate compact law and released the juvenile on grounds

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of local laws governing the detainment of out-of-state juveniles for misdemeanor charges. The juvenile walked away from the detention center unsupervised. While robbing a convenience store one day later, the...one year later, the juvenile shot and killed a store clerk. The juvenile remains locked up in a state prison today. A 15-year-old adjudicated juvenile received specialized and high-cost sex offender treatment and services in his state of residence. The terms of the juvenile's probation included weekly counseling and regular therapy by a state-sanctioned nonprofit organization. The father of the juvenile was fired from his employment and was forced to accept employment in another state. After hearing about the juvenile's need to move, the sending state terminated the juvenile's court order for treatment early, due to the high costs associated with sex offender treatment, and failed to notify the receiving state about the juvenile. Under the compact rules, sending states are obligated to fund necessary treatment services and supervision for juveniles moving across state lines. As expected, the youth moved with his father, unsupervised and without treatment. Not until he was adjudicated for another sex offense...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...one year later did the receiving state find out about the youth's troubled past. The mother of a runaway filed a report with the National Crime Information Center. The 16-year-old runaway was identified in a neighboring state three days later and placed in a juvenile temporary housing with minimal supervision. Youth workers in the receiving state discovered that the youth suffered from an extreme case of depression but could not provide needed therapy without permission by the youth's parents and payment from their home state. In the meantime, the mother was notified, but lacked funds to arrange for transportation. The home state forbade the use of funds for transportation. The end of the story is one week later the youth escaped from the temporary housing supervision. Her remains were found three months later and it was determined she committed suicide. These are the kinds of things that happen under the current compact.

SENATOR CUDABACK: Time, Senator Thompson.

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SENATOR THOMPSON: Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Louden, on the Beutler amendment.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Since I've been listening to this discussion this morning, this is something that I have very little experience with and so I figure I'm probably going to have to make a decision some time today on how to vote on this matter, so I do have some questions that I would like to ask. May I ask Senator Thompson if she would yield for questions?

SENATOR CUDABACK: You may ask her. Senator Thompson, would you yield?

SENATOR THOMPSON: (Microphone malfunction) Yes.

SENATOR LOUDEN: The way I understand this, it was like 1955 when the original compact of some sort was made.

SENATOR THOMPSON: Correct.

SENATOR LOUDEN: Now, what's the difference between the one now and...or I guess I should say how was the one in 1955 operated by the states? Was there an authority some place, or did each state operate it on an individual basis with the other states, or how did it work then?

SENATOR THOMPSON: Well, each state has a director. One of the problems that's happened is that there is no way to ensure standards of practice between the states. This idea of a national commission to oversee this is a new concept, and part of its duty would be to try to resolve these issues between the states. So it goes beyond a mechanism and goes beyond a governance process that has, quite frankly, more teeth. It was kind of a toothless tiger before.

SENATOR LOUDEN: Okay. And now with this, with this compact then, there's going to be some type of an operating authority

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set up, some sort of a board with a director and staff and that sort of thing to, what, I guess coordinate the business between states? Is that what this one is trying to do?

SENATOR THOMPSON: Yes. The states currently spend a lot of time arguing about how they're going to handle things. We've been lucky in that it's worked fairly well for Nebraska, but should...we could be in the same boat if a neighboring state chose to do some of the things that have happened in other parts of the country.

SENATOR LOUDEN: Now, what...this operating authority, what...how far can they get...can they get us...I shouldn't use the word "in trouble," but for lack of better words, this operating authority, how far...what control would they have over what Nebraska had to do and contribute, and what if Nebraska decided there was something that they couldn't work with? I mean I...we all know what can happen with compacts.

SENATOR THOMPSON: Well, what would happen is...the first thing would be to try to resolve the dispute, but we could be...it can go both ways for us. We could be left holding the bag for treatment costs if they aren't worked out. Essentially, it's the state under the court whose jurisdiction they're coming from, that we transfer it to another state and they take over the supervision. But we would continue to pay the costs...

SENATOR LOUDEN: Now, is there...

SENATOR THOMPSON: ...that we were already planning to pay.

SENATOR LOUDEN: How much...is there that much that would be costs between states, or is this more something to track individuals that move from one state to the next and keep track of them? Is this more of a tracking authority, or is this authority that's going to decide on what method of help...

SENATOR THOMPSON: Treatment.

SENATOR LOUDEN: ...these people need? Yeah, treatment.

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SENATOR THOMPSON: That will...the youth that are being dealt with here are already subject, if it's a treatment issue, they're already subject to the court. And it happens in a divorce where a child moves from one state to another or...and there are two sets of kids here. There are the ones that the parent gets a job in another state and they need to move, but the...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...the child still needs to be supervised. So Nebraska's office would contact, for example, Iowa; say, we've got a kid coming over, they'll be in this kind of treatment. And then their probation officer will take over the supervision. Or, if the child has run away and ends up in Nebraska, you get the child back to the state where they belong.

SENATOR LOUDEN: Now one last question. What...does Nebraska have to pay a fee, or do we pay...is it a pay-as-you-go or what's it going to cost Nebraska?

SENATOR THOMPSON: The fiscal note with this is just the...is split between Health and Human Services and the courts, and it's the money to send people to the commission and any of those kinds of things. This is already...we've already got a...the bureaucracy is already in place in the state. This is to resolve the state...between-state issues, and so there will be a \$12,000 fiscal note for this bill.

SENATOR LOUDEN: Okay. Thank you, Senator Thompson.

SENATOR CUDABACK: Time, Senator. Thank you, Senator Louden. Senator Beutler, there are no further lights. I will recognize you to close on FA136.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, again, the amendment simply moves the authority to appoint our representative into the Legislature, and we would do it as a body by resolution. And if you approve of this concept then we'll follow up with a cleanup amendment, but that's the basic idea before you. If it makes you feel more comfortable, even if

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the Governor doesn't appoint this person, he has a heavy hand in the process because there is a state council that is also appointed and must be appointed under this law to advise on the administration of the law, and that membership can be determined however the state determines, although it must include certain types of people. And then back where we actually implement that provision of the compact, the Governor appoints six members to the council, so the Governor does all the appointing to that particular council. Includes one member of the Legislature, but then the Governor appoints the rest from different areas. So the Governor is still in the process in a significant way. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the closing on FA136 to LB 4. The question before the body is, shall that amendment be adopted? All in favor vote aye; those opposed, nay. The question before the body is adoption of the Beutler amendment, FA136. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment.

SENATOR CUDABACK: The amendment is agreed to. Mr. Clerk, items for the record?

CLERK: Mr. President, new resolution, LR 70, by Senator Kruse; that will be laid over. An amendment, Senator Redfield, to LB 500 to be printed. Your Committee on Enrollment and Review reports LB 739 and LR 12CA to Select File. That's all that I had, Mr. President. (Legislative Journal pages 1052-1054.)

I do have a priority motion.

SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator Byars would move to recess until 1:30 p.m.

SENATOR CUDABACK: Motion to recess until 1:30. All in favor say aye. Those opposed, nay. We are in recess.

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RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK:      Good afternoon.      Welcome to the George W. Norris Legislative Chamber. Our afternoon session is about to convene. Senators, please check in.

ASSISTANT CLERK:      I do have a quorum present, Mr. President.

SENATOR CUDABACK:      Any items for the record, Mr. Clerk?

ASSISTANT CLERK:      One item, Mr. President. Senator Beutler has an amendment to LB 4 to be printed in the Journal. (Legislative Journal page 1054.)

SENATOR CUDABACK:      Thank you, Mr. Clerk. At the request of Senator Thompson, we will be passing over LB 4 and LB 4A, and Speaker Brashear has agreed to do such. So we will move on now to LB 682. Mr. Clerk.

ASSISTANT CLERK:      Mr. President, LB 682 was offered by Senator Schimek and Brashear. (Read title.) The bill was read for the first time on January 19 of this year, referred to the Government, Military and Veterans Affairs Committee. That committee reports the bill to General File. There are committee amendments attached. (AM0574, Legislative Journal page 659.)

SENATOR CUDABACK:      Thank you, Mr. Clerk. Senator Schimek, you're recognized to open on LB 682.

SENATOR SCHIMEK:      Yes, thank you, Mr. President and members. LB 682 is the result of a visit to my office last fall by the Secretary of State, and he was interested in having a bill introduced to change Nebraska's provisions for filing...or for filling a vacancy in the House of Representatives. Unlike



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vacancies in the Senate, which can be filled by appointment by the Governor, the U.S. Constitution requires an election to fill a vacancy in the House of Representatives. The Secretary of State, along with the Governor, felt that a recent circuit court decision on filling vacancies in the House warranted a review of our laws on this topic. The case, ACLU of Ohio v. Taft, was heard by the Sixth Circuit. You may remember Representative Traficant from Ohio, who was expelled from Congress on July 24, 2002. The Governor of Ohio announced he would not call a special session to fill the House vacancy. Congress was scheduled to adjourn on October 3, but did not adjourn sine die until November 22. At the general election, a new congressman was elected, but he didn't take office until January 3 of 2003. In other words, the district was unrepresented from July 2002 to January 2003. The court held that the U.S. Constitution imposed a mandatory duty upon the Governor to hold an election to fill the vacancy, and although there may be situations where an election is not necessary because the time remaining in Congress is de minimis, that was not the situation in Ohio. In order to ensure Nebraska meets the standards articulated in the Sixth Circuit Court case, and to provide the Governor with more specific guidelines on when to order a special election, this bill was introduced. The specific provisions of the bill are as follows: If a vacancy occurs on or after August 1 and before the statewide election in an even-numbered year, the Governor will order a special election to be held in conjunction with the statewide general election, and you can actually follow along on your orange sheet as I'm reading the text here. The only candidates who may appear on the ballot, in that first column then, are candidates who were nominated at the statewide primary election or who comply with the current provisions for filling a vacancy for a partisan office. The candidate receiving the most votes at such special election will serve for the remainder of office...remainder of the vacated term and for the succeeding term of office. So those candidates, under the first column, would all (A) already be on the ballot, or they would be nominated through the partisan vacancy provisions. In other words, they would be nominated by their political party. Or they would be a person who filed petitions pursuant to Section 32-616, and that's going to be the committee amendment,

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basically. And then, as you can see, that person serves the remaining term and succeeding term. Secondly then, if a vacant (sic) occurs on or after the date of the statewide general election and prior to the end of the term of office, no special election will be called because there's not really time to call one. If the vacancy occurs at any other time, the Governor will order a special election to be held within 60 days after the vacancy occurs. Each recognized political party in the district in which the vacancy occurs may select a candidate. Such candidates will appear on the ballot with the appropriate political party designation. Any other person may have his name...his or her name placed on the ballot without a political party designation by filing a candidate filing form and paying a filing fee. The candidate receiving the most votes at such election will serve for the remainder of the vacated term. And that is it in a nutshell. I'd be happy to try to answer questions in case there's confusion or you'd like to ask something about a particular circumstance. With that, Mr. President, I would be happy to discuss the committee amendments.

SENATOR CUDABACK: Senator Schimek, as Chairperson of the Government, Military and Veterans Affairs Committee, you're recognized to open on the committee amendments to LB 682.

SENATOR SCHIMEK: Yes, and this simply is what I mentioned about a person who would be filing for the House of Representatives on or after August 1 in an even-numbered year. The amendment allows that person to have his name...his or her name placed on the ballot by filing petitions. It's as simple as that. So, with that, Mr. President, that concludes my remarks.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening on LB 682, along with the committee amendments. Open for discussion. Senator Chambers, followed by Senator Redfield.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I've had a chance to read this bill. It made no sense to me. I had a chance to talk to Senator Schimek about it. It made a little more sense. And as time goes on and I take the time to really go through it step by step, I'm sure it will come clear.

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But based on what the bill is attempting to do, I believe I support it. But what I want to take a second or two or more to comment on is a part of the theory that I'm going to use when I put together a challenge to the term limits proposition, not from the standpoint of the right of a person to serve, but the right of the people to vote. We're going to have to approach it from a federal right. Senator Schimek is right when she pointed out that the U.S. Constitution allows an appointment by the Governor to fill a vacancy that occurs in the Senate. As everybody knows, the Senate is where each state is represented as an entity; therefore, each state, regardless of size, receives two senators. The House, on the other hand, represents people or population. There can be no appointment by the Governor to fill that vacancy. It must be done by way of election, regardless of who the person is that might be seeking to fill that slot. So the founders, as they are called by some people, placed a tremendous amount of importance on the right to vote, the right of the people to choose whom they want to serve them, not a person selected by the Governor. On the Senate side, the Governor can appoint. When it comes to the right of the people to representation, they have a right to select a person of their choice. No individual or entity should arrogate to itself to determine for whom the people may be allowed to vote. Now, there are certain disqualifications to holding office, such as committing certain crimes or things of that nature. But when nothing growing out of the conduct of an individual is used to keep that person from holding an office, which the people who vote desired to put that person into, would be suspect. That's just one of the angles. But it's good sometimes to go back and look at what the U.S. Constitution has to say in trying to determine the value to be placed on certain rights and theories that can be used to try to make a point in a court of law. I'd like to ask Senator Schimek a question, though, now about the bill itself.

SENATOR CUDABACK: Senator Schimek, would you respond to a question?

SENATOR SCHIMEK: Yes. Thank you.

SENATOR CHAMBERS: Senator Schimek, if during this election,

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whenever it occurs, special or whatever, if it's going to occur prior to the election when a House member would be selected, the person will serve up until that election, plus the term for which a person would have been selected at that upcoming election. Is that true?

SENATOR SCHIMEK: If this occurs between August 1 and the election itself, yes.

SENATOR CHAMBERS: Okay. So that person then serves more than two years on the basis of having been elected once. Is that correct?

SENATOR SCHIMEK: That is correct.

SENATOR CHAMBERS: This is a question that I'm asking because I don't know the answer. Is there anything unconstitutional about that? In other words, a person is elected to the House for a term of two years. This election would allow the person to serve longer than two years. Was that issue resolved?

SENATOR SCHIMEK: It would be...it would be for a very short period of time, Senator Chambers. It would be for that period of time between the election in November and the convening of Congress...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...in January. And I believe if it were being an appointment, a appointment process, that...well, I shouldn't say that. Never mind. I'm fairly confident that other states do it this same way, Senator Chambers.

SENATOR CHAMBERS: I will turn off my...I meant I will stop for now and then proceed when I'm recognized. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Redfield, followed by Senator Chambers.

SENATOR REDFIELD: Thank you, Mr. President, members of the

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body. I do have some questions for Senator Schimek, if she would respond.

SENATOR SCHIMEK: Yes.

SENATOR CUDABACK: Senator.

SENATOR SCHIMEK: Yeah, sorry.

SENATOR REDFIELD: Senator, I'm looking at the committee amendment and I'm seeing that a candidate could place their name on the ballot by filing petitions. Would those petitions involve a certain number of signatures?

SENATOR SCHIMEK: Yes.

SENATOR REDFIELD: Then in the main body of the bill, in Section 1, it's found on page 3, line 19, it starts: "Any other person may have his or her name placed on the ballot without a political party designation by filing a candidate filing form and the filing fee as provided." Would they also have to get signatures, or are we going to have an inconsistent qualification here?

SENATOR SCHIMEK: You know, that's the exact same question I asked committee counsel at some point during the discussion of this, and I believe that the explanation is that when you have the August 1 to the election period, you already have people who have gone through a primary at that point. What you have is you have a vacancy in one of the positions. In other words, for instance, let's say that...let's say that candidate A and candidate B have run in the spring primary election, and anybody would have had a chance at that time to get on the ballot by filing a fee and, you know, filing a form and paying the fee. But we're talking about later in the process, after the primary is already over, and the only vacancy at that point on the ballot is that one...either candidate, or candidate A, who's no longer in the running. They've either...either they've died or they have had to resign from the campaign for one reason or another. So there's one vacancy on the ballot. So, technically, we're asking, perhaps, a bit more from a person who

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would want to get on the ballot at that point, because they could have done it in the primary. And that differs from the candidate at any other time, and you'll see that in column three on the orange sheet. At that point, all a candidate has to do is either be selected by their political parties or a candidate can just file a form and pay the fee at that point, because that's a wide-open race at that point.

SENATOR REDFIELD: So, could we have 25 names on the ballot at that point?

SENATOR SCHIMEK: We could.

SENATOR REDFIELD: So anyone that wants to put their name on the ballot could do it with a fee. Would there be any...

SENATOR SCHIMEK: And remember those fees are pretty hefty, actually.

SENATOR REDFIELD: Yes. But would there be any prohibition against more than one person from a party, or are you thinking in terms of these other candidates being perhaps Independents or Green Party or Libertarian Party or...

SENATOR SCHIMEK: They are...the candidates who are chosen by their political parties in this instance are the only ones who would go on the ballot with a party designation.

SENATOR REDFIELD: And so the one...

SENATOR SCHIMEK: So anybody else, well, you'd have to have no party designation, or Independent, or Green Party, or some such.

SENATOR REDFIELD: But they could go on to a party, but run on the ballot without that designation?

SENATOR SCHIMEK: Yes. If their...let's said their party is the Green Party and in this particular congressional district it's not a recognized party; in other words, it didn't get enough votes in the last election...

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SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...to be a recognized party, then that...they...that party could not select their own candidate like one of the major parties could. But the person who wanted to file certainly could at that particular time. And I'm not sure, but I think maybe they could file as a Green Party candidate at that time because they're not a recognized party. No. Committee counsel says, no, can't have a party designation, period.

SENATOR REDFIELD: Well, I certainly support the idea of correcting our statutes so that we have a procedure in place. I'm going to listen to the discussion, because I don't know that I'm comfortable with a free-for-all at that point. There could be no limit to the number of candidates that may be on a ballot, and then we could find ourselves in a situation where we could have an elected official who doesn't represent 50 percent of the vote.

SENATOR SCHIMEK: We've had that in this Legislature before, Senator. Do you remember...

SENATOR REDFIELD: In the general?

SENATOR CUDABACK: Time, Senator.

SENATOR SCHIMEK: ...when we did the redistricting in 1991? I know you weren't...

SENATOR CUDABACK: I'm sorry, but time is up.

SENATOR REDFIELD: Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Chambers, followed by Senator Beutler.

SENATOR CHAMBERS: Mr. President, I'd like to ask Senator Schimek a question.

SENATOR CUDABACK: Senator Schimek, would you yield?

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SENATOR SCHIMEK: Yes. Thank you.

SENATOR CHAMBERS: Senator Schimek, is there any place in the U.S. Constitution which sets the term of a member of the House at two years?

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: Do you happen to know where that is?

SENATOR SCHIMEK: Is it Article...

SENATOR CHAMBERS: I think maybe...

SENATOR SCHIMEK: ...Article I?

SENATOR CHAMBERS: ...counsel is getting it. And that's not a trick question. I just want to look at the actual language...

SENATOR SCHIMEK: Okay.

SENATOR CHAMBERS: ...of it, because I'm not challenging that it's two years, but I'm interested in seeing the terminology used.

SENATOR SCHIMEK: Okay. Thank you.

SENATOR CHAMBERS: But what you said when we were running out of time the last time you and I were talking is that you believe this is done in other states, meaning the carryover from when the person is elected, whatever brief period of time it happens to be, and will be the individual who will serve out the next term. But there will only be one election. Isn't that true?

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: That one that fills the vacancy.

SENATOR SCHIMEK: Yes.



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SENATOR CHAMBERS: Now the Legislature can set the times and manner of conducting elections, but can it change the term for which a person serves in the House?

SENATOR SCHIMEK: Now, and, Senator, a thought just struck me in the middle of your asking the second question. Go back to your first question again and ask it. (Laughter)

SENATOR CHAMBERS: What was the language that is used in the constitution to set the term...

SENATOR SCHIMEK: No, I mean about the person who is elected, can they...

SENATOR CHAMBERS: Well, which first one do you want? You want the first one that I asked, or the first one that you designate the first?

SENATOR SCHIMEK: When you asked me about the candidate who gets elected in a special election...

SENATOR CHAMBERS: Okay.

SENATOR SCHIMEK: ...in November.

SENATOR CHAMBERS: Well, when the vacancy occurs between August and the election.

SENATOR SCHIMEK: And then they can serve that remaining term and the two-year term coming up.

SENATOR CHAMBERS: And the full term.

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: But that person will be serving more than two years.

SENATOR SCHIMEK: Right, but that doesn't apply to any of these other circumstances. Let's say that, for instance...

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SENATOR CHAMBERS: Let's just stick with this one.

SENATOR SCHIMEK: Okay.

SENATOR CHAMBERS: This is the only one I'm looking at.

SENATOR SCHIMEK: Okay. Good.

SENATOR CHAMBERS: By what authority does a state extend the period of time for which a person elected to the House can serve? Now let me ask a question.

SENATOR SCHIMEK: Certainly.

SENATOR CHAMBERS: Could the House be called into special session during that period...

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: ...before the general election?

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: And that person would then attend a session of the Congress.

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: And would continue to serve the two years following the election, when others are selected.

SENATOR SCHIMEK: That's the way this is set up, yes, Senator Chambers.

SENATOR CHAMBERS: Are you aware of any states that are doing this?

SENATOR SCHIMEK: Let me...let me check that with...

SENATOR CHAMBERS: Okay.

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SENATOR SCHIMEK: ...the Secretary of State's Office.

SENATOR CHAMBERS: And I'm not going to try to stop the bill or delay it. It's just something that I'm interested in having the answer to. We know that states cannot limit the terms, the number of terms, a person in the House or the U.S. Senate can serve. You can...the state cannot limit the number of terms. Can the state alter the length of time for which a person will serve in the House when that person has been elected one time? That's my question. There are regular intervals at which people are elected to the House of Representatives. That election occurs on a certain Monday after a certain something day in November of whatever the year is. That's when that election is to occur. If somebody had been in the house prior to that, that person...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...would have to run again to be reelected, or a different person is elected for the next term. But under this proposal, the individual would have been elected by way of a special election, would not just fill out the remainder of that term but would automatically carry over into the next term without having been elected pursuant to the requirements of the U.S. Constitution. So can a state determine that a person will serve a longer period of time? That's the question. Senator Schimek is going to find the answer. And that's the only question at this point that I have with the bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Is Senator Beutler present? I'm sorry, I did not see you. I'm sorry, Senator Beutler. You may speak, if you wish to.

SENATOR BEUTLER: I shifted slightly in my chair, Mr. Speaker, but I didn't expect that to throw you.

SENATOR CUDABACK: Thank you.

SENATOR BEUTLER: (Laugh) Senator Schimek, I think I'm understanding the bill and I just want to, by way of one

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example, see if I'm understanding it correctly.

SENATOR CUDABACK: Senator Schimek.

SENATOR BEUTLER: It's the election that takes place after August 1 and between the regular election date is the part I find hard to set in my mind, but let me ask you by way of an example. Let's say in a primary we have a Republican incumbent who's very popular, and on the primary ballot he has...he or she has no opposition. Okay? There are three Democrats on the primary ballot. So you have, on the primary ballot, three Democrats and one Republican incumbent. So if then the vacancy is after September 1--let's say it happens between September 1 and the election date--all those three Democrats can be on the ballot, right?

SENATOR SCHIMEK: No.

SENATOR BEUTLER: No. All right.

SENATOR SCHIMEK: And in which...who's the vacancy? The Republican?

SENATOR BEUTLER: It's the Republican incumbent...

SENATOR SCHIMEK: Okay. And the...

SENATOR BEUTLER: ...who dies on September 15.

SENATOR SCHIMEK: And the Democrat who got through the Democratic primary would be the Democrat on the ballot.

SENATOR BEUTLER: Okay. So just the one Democrat, whoever won.

SENATOR SCHIMEK: That's right.

SENATOR BEUTLER: Okay. So, under that category, there would be one Democrat on the ballot. Says, "persons nominated through the partisan vacancy provisions," but that wouldn't happen because the date of death was September 15, under our example. Would that be right?

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SENATOR SCHIMEK: That would be right.

SENATOR BEUTLER: Okay. Then, by committee amendment, you added the petition process, but don't those have to be filed by September 1?

SENATOR SCHIMEK: That's right.

SENATOR BEUTLER: So the only one who would be on the ballot, if this happened after September 1, would be the Democrat.

SENATOR SCHIMEK: That's my understanding.

SENATOR BEUTLER: (Laugh)

SENATOR SCHIMEK: I mean...and realize why this is. It's because of ballot organization and printing and distribution and all those kinds of things which take time, I understand, to verify all the ballots, et cetera. I think that's why, anyway, Senator Beutler.

SENATOR BEUTLER: It just seems to me that when you have two major parties in a state that there ought to be some way that both get represented on that ballot, especially if it's going to extend not only for the end of the term but for the next two years. I don't know what the answer is, but somehow...

SENATOR SCHIMEK: And I...

SENATOR BEUTLER: ...that seems inadequate to me.

SENATOR SCHIMEK: I understand your question and I think it's a good question,...

SENATOR BEUTLER: Okay.

SENATOR SCHIMEK: ...especially in the day of technology and so forth, that we ought to be able to do better than that, maybe. But this is the way it fits in with our statutory scheme right now, as I understand it.

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SENATOR BEUTLER:      Would it be possible to extend the partisan convention nomination, so that a quick...

SENATOR SCHIMEK:      Well, indeed, that's how it happens. I mean, let's say this happened...

SENATOR BEUTLER:      It's just that the date of...the date of the ballots or getting the ballots prepared is the problem then, right?

SENATOR SCHIMEK:      That's...I think that's the reason for it. Because what happens in the case of a vacancy is that your particular party has to meet in district caucus or however they determine to do it. The district members or their central committee or whatever, they are the ones that actually...

SENATOR CUDABACK:      One minute.

SENATOR SCHIMEK:      ...select this partisan candidate.

SENATOR BEUTLER:      You know, even having something seems better than nothing, maybe even appointment by the chair of the party at that point. I don't know. Food for thought.

SENATOR SCHIMEK:      Well, it's something to think about. Thank you.

SENATOR BEUTLER:      Pardon me?

SENATOR SCHIMEK:      It's something to think about. Thank you.

SENATOR BEUTLER:      Yeah. Thank you.

SENATOR CUDABACK:      Thank you, Senator Beutler. Senator Schimek, yours is the last light, so you may either speak or you...

SENATOR SCHIMEK:      Well, I want to speak, Mr. Speaker, because I turned on...

SENATOR CUDABACK:      You may.

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SENATOR SCHIMEK:    ...my light so that I could have a little further conversation with Senator Chambers,...

SENATOR CUDABACK:   You're recognized to speak.

SENATOR SCHIMEK:    ...and he may want to have some further conversation, too. But I'm in a little bit of a pickle because he is talking to my staff member right now and I guess...I guess I could talk for a little while and see, or maybe you could recognize Senator Chambers.

SENATOR CUDABACK:    You are speaking but not closing. You're speaking now.

SENATOR SCHIMEK:    No, I am not closing. And may I ask Senator Chambers a question, I guess is what I need to do.

SENATOR CUDABACK:    Senator Chambers, are you available for a question from Senator Schimek?

SENATOR CHAMBERS:    Mr. President, members of the Legislature, I was on...I was halfway between here and Chicago and I heard that Senator Schimek wanted to ask me a question and you know how compliant I am when one of my female colleagues wants to ask me a question, so I made it back. Senator Schimek, ask the question, give me a minute to catch my breath, and I'll answer it the best that I can under the exigent circumstances.

SENATOR SCHIMEK:    Actually, Senator Chambers, I wanted the opportunity to just continue a little bit our dialogue, and I know you've just been talking to Christy Abraham, the committee counsel, and I guess I would like for you to continue with any questions that you might have.

SENATOR CHAMBERS:    All right. Based on what counsel told me, there will not be a special election between the August 1 and general election. The general election will serve both purposes...

SENATOR SCHIMEK:    That is correct.

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SENATOR CHAMBERS: ...of filling the vacancy and starting the...putting a person in for the next term.

SENATOR SCHIMEK: Yes. That's what she just shared with me, that you're actually having an election for two purposes.

SENATOR CHAMBERS: And the question that that raises in my mind, based on the court case she had been referring to, is that the district involved will be without representation for the period of time between August 1 and the general election in November.

SENATOR SCHIMEK: That is correct.

SENATOR CHAMBERS: State law, if complied with as it exists now, would push that special election very close to the general election. But even if that were the case, the state law I don't think would trump the federal requirements, as laid down by a court. So if in the Trafigant case, 14 days would have been involved with a district not having representation, because a special election was not going to be called.

SENATOR SCHIMEK: But it was a much longer period of time than that, Senator Chambers.

SENATOR CHAMBERS: Okay.

SENATOR SCHIMEK: And the court said in that decision that it was not a de minimis period of time; that indeed it would...

SENATOR CHAMBERS: But I'm sure the court didn't define "de minimis," "de minimis."

SENATOR SCHIMEK: No, it didn't define it actually. I think it kind of left it up to us to try to figure it out.

SENATOR CHAMBERS: And if we guess wrong then what we do would be struck down by the courts, and maybe that person who ran during the general election...well, there just would not have been any representation in that district from the time the vacancy occurred until a person was elected to office in



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November.

SENATOR SCHIMEK:      And that vacancy occurred in July, Senator. So, from July until the next Congress met, there was nobody representing that district.

SENATOR CHAMBERS:      Okay. But in what we're talking about, we're a month later. The vacancy we're talking about would occur in August in your bill.

SENATOR SCHIMEK:      It could, any time between August 1 and September 1.

SENATOR CHAMBERS:      Right.

SENATOR SCHIMEK:      Right.

SENATOR CHAMBERS:      So it could occur as early as August 1.

SENATOR SCHIMEK:      It could, or August 31.

SENATOR CHAMBERS:      But what we have to look at is what's allowed under the law, because the vacancy that would be affected...

SENATOR CUDABACK:      One minute.

SENATOR CHAMBERS:      ...would take place between August 1, starting August 1, until whatever the top range is.

SENATOR SCHIMEK:      Right. But the vacancy would then only be from whatever date that was until elections were completed in November.

SENATOR CHAMBERS:      And as I stated, I'm not going to try to do anything with this bill on General File, but I'm looking for answers, and committee counsel is going to share with me a copy of the federal decision...

SENATOR SCHIMEK:      Excellent.

SENATOR CHAMBERS:      ...and that might give answers to all the

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questions that are still rattling around in my head.

SENATOR SCHIMEK:    And I'm...and I briefly looked at that court case, but I don't think it really defines a length of time.    I mean, I think it left that open.

SENATOR CHAMBERS:    Well, if they said "de minimis," that would mean minimal or minimum, and they would not have given a specific number of days, so I'm not holding you to that...

SENATOR SCHIMEK:    Yeah.    Okay.

SENATOR CHAMBERS:    ...or suggesting you've said that here today.

SENATOR SCHIMEK:    Okay.    Thank you.

SENATOR CUDABACK:    Time, Senator.

SENATOR CHAMBERS:    Thank you.

SENATOR CUDABACK:    Thank you, Senator Chambers and Senator Schimek.    Senator Janssen, on the Government, Military and Veterans Affairs Committee amendment.

SENATOR JANSSEN:    Thank you, Senator Cudaback.    I'm sitting here with...listening to this discussion and it's kind of hard for an old grocer to figure this out.    But if I...if I could ask Senator Schimek a couple of questions, please.

SENATOR CUDABACK:    Senator Schimek, would you respond to a question?

SENATOR SCHIMEK:    Yes, I would.    Thank you.

SENATOR JANSSEN:    Senator Schimek, under this scenario, all right, there...in a primary in the spring there is an R elected and a D elected in the primary, right?

SENATOR SCHIMEK:    Correct.

SENATOR JANSSEN:    All right.    So if D is the incumbent and he

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kicks the bucket,...

SENATOR SCHIMEK: Uh-huh.

SENATOR JANSSEN: ...all right, then under your scenario would that...would a caucus be held and another D put in his place, and could he fill that position, then, from August 1 till the first of the year?

SENATOR SCHIMEK: No. No, he would simply be eligible for the ballot, then, in November.

SENATOR JANSSEN: For the ballot in November.

SENATOR SCHIMEK: Correct. He would be...

SENATOR JANSSEN: All right.

SENATOR SCHIMEK: ...the party's candidate in November, because their candidate died between the primary and the general election.

SENATOR JANSSEN: So the way it is right now, there's no one else on the ballot.

SENATOR SCHIMEK: Uh-huh.

SENATOR JANSSEN: Well, he...

SENATOR SCHIMEK: Well,...

SENATOR JANSSEN: ...but, you know, but he would be deceased, or he or she would be deceased.

SENATOR SCHIMEK: It depends on exactly when it happened, but yeah. Right now the parties have the ability to fill those kinds of situations. In fact, if I'm remembering this correctly, I think that former Congressman Charlie Thone was put on the ballot in that fashion. Am I remembering that right?

SENATOR JANSSEN: Yeah, I think so. But...

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SENATOR SCHIMEK: Yes, I think so.

SENATOR JANSSEN: ...so the only thing that would happen would be that person that is...that is appointed, then, to fill that vacancy by that Democratic Party, let's say Democratic Party, would serve, then, until the 1st of January, right,...

SENATOR SCHIMEK: That's correct.

SENATOR JANSSEN: ...or until the...until they reconvene again?

SENATOR SCHIMEK: That's correct. Uh-huh.

SENATOR JANSSEN: Now, he would serve until the general election.

SENATOR SCHIMEK: No, he doesn't serve. He's the candidate, then, of the party...

SENATOR JANSSEN: He would be a candidate.

SENATOR SCHIMEK: ...until the November election is over. And if he...

SENATOR JANSSEN: Okay.

SENATOR SCHIMEK: ...or she wins that election,...

SENATOR JANSSEN: Yes.

SENATOR SCHIMEK: ...then that person serves the remaining part of the term and the next two years.

SENATOR JANSSEN: If he or she is elected in the general...

SENATOR SCHIMEK: Right. Uh-huh.

SENATOR JANSSEN: ...election.

SENATOR SCHIMEK: Uh-huh.

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SENATOR JANSSEN: So that's what we're concerned about,...

SENATOR SCHIMEK: That's what we're trying to do.

SENATOR JANSSEN: ...is that period of time between the general election and when they reconvene in January.

SENATOR SCHIMEK: Right. And they may never reconvene in that time. Sometimes they do and sometimes they don't.

SENATOR JANSSEN: Well,...

SENATOR SCHIMEK: But more than likely, they would.

SENATOR JANSSEN: Okay.

SENATOR SCHIMEK: And maybe I shouldn't say "convene." They meet again, at least.

SENATOR JANSSEN: Yeah.

SENATOR SCHIMEK: I'm not sure if...the terminology is "convene," but they often meet in November or December, and that person would then be representing that district.

SENATOR JANSSEN: Yeah, he would be representing...

SENATOR SCHIMEK: Uh-huh.

SENATOR JANSSEN: ...he or she would be representing (inaudible).

SENATOR SCHIMEK: Right.

SENATOR JANSSEN: Thank you. I understand now what you're doing.

SENATOR SCHIMEK: Oh, good, because I'm not sure I do, Senator Janssen. (Laugh)

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SENATOR CUDABACK: Thank you, Senator Janssen.

SENATOR JANSSEN: I give the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Schimek, there are no further lights on. You're recognized to close on AM0574.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I do truly appreciate the questions because I think the questions have helped me, both before we came up here on the floor and since we've been up here, to try to get this straight in my mind, because it is a little bit confusing. And, Senator Chambers, I think...I'm looking at part of the Sixth Circuit decision right now and I think that...I think that it would be good to have maybe you have an opportunity to read this, and maybe for me, too, to take a look at it, so that when we come back on Select File we'll either have all the answers or we'll have more questions. I'm not sure which. So thank you, Mr. President. I would appreciate your vote to advance this. I think that we've made it fairly clear what we're trying to do here. We're really trying, as Senator Janssen pointed out, to find a way of having somebody serve out the remainder of a term if the vacancy occurs between August 1 and the November election. And then if it is at any other time in the year, let me remind you, that the election would be just to fill out the vacated term. In other words, we've tried to set that as a fairly short period of time when the elected person would carry out the rest of the term and then do the additional two years, and that's just that first candidate we've been talking about so much. Any other time when you have to call a special election, that winner of that election would only serve out the remainder of the term. So with that, Mr. President, thank you very much.

SENATOR CUDABACK: Thank you, Senator Schimek. And you were closing on the committee amendments, not advancing, Senator Schimek.

SENATOR SCHIMEK: Oh, I certainly was.

SENATOR CUDABACK: Yeah.

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SENATOR SCHIMEK: I think I thought I was closing on the bill, but...

SENATOR CUDABACK: Yeah. Just...

SENATOR SCHIMEK: ...yes, the committee amendment.

SENATOR CUDABACK: Yeah.

SENATOR SCHIMEK: I think I explained that that is simply that people who want to file in that August 1 to September 1 who aren't members of a political party can do so by filing petitions. Thank you.

SENATOR CUDABACK: Thank you; we just made that clear. Question before the body is adoption of the committee amendments offered by the Government, Military and Veterans Affairs Committee to LB 682. All in favor vote aye; and those opposed, nay. The question before the body is adoption of the committee amendments to LB 682. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of committee amendments, Mr. President.

SENATOR CUDABACK: The committee amendments have been adopted. Anything further on the bill, Mr. Clerk?

ASSISTANT CLERK: I have nothing further at this time.

SENATOR CUDABACK: Open for discussion on advancement to E & R Initial. Open for discussion on advancement of LB 682. Senator Schimek, there are no lights on. You're recognized to close on advancement of LB 682.

SENATOR SCHIMEK: I think I just closed, Mr. President, and I think that will suffice. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. The question before the body is, shall LB 682 advance to E & R Initial? All

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in favor vote aye; those opposed, nay. The question before the body is advancement of LB 682. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK:    32 ayes, 0 nays on the motion to advance, Mr. President.

SENATOR CUDABACK:   LB 682 does advance. We now go to LB 389.

ASSISTANT CLERK:    Mr. President, LB 389 was introduced by Senator Mines. (Read title.) Bill was read for the first time on January 12 of this year, referred to the Banking, Commerce and Insurance Committee. The committee reports the bill to General File. There are committee amendments. (AM0572, Legislative Journal page 625.)

SENATOR CUDABACK:   Thank you, Mr. Clerk. Senator Mines, to open on LB 389.

SENATOR MINES:    Thank you, Mr. President. Colleagues, it's my pleasure to bring before you LB 389 and it is the Health Care Prompt Payment Act. There was great cooperation and compromise on this bill by the insurance industry, healthcare providers, the Department of Insurance, and many other parties, and to their credit they're all equally unopposed to the bill. There were no opponents or testifiers in a neutral capacity at our public hearing, and the Banking, Commerce and Insurance Committee unanimously voted LB 389 to General File. The prompt payment of claims to healthcare providers by insurance providers is not a new concept to this body. Back in recent years, Senator Kremer has introduced similar legislation, and I want him to know that I appreciate the hard work that he and his staff did, and acknowledge their contribution to this bill. Here's how the system is supposed to work. An insured patient goes to their healthcare provider, a doctor or dentist, and they are treated. The healthcare provider submits their bill or claim to the insurance provider, and the insurance provider sends the money for that bill back to the healthcare provider. It's a very simple procedure. Unfortunately, it's not that simple in practice. The vast majority of our insurance providers really do pay very quickly and are very responsible



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and responsive, and, you know, I could name Nebraska BlueCross BlueShield, Mutual of Omaha among those. Unfortunately, every year there seems to be one or two insurers that mismanage their claims. They don't pay promptly. They ignore claims, and we in the Banking Committee, Banking, Commerce and Insurance, as well as the Department of Insurance, hear about those. And LB 389 is merely an apparatus that would allow the Department of Insurance to deal with these insurers who choose not to play nice. Let me give...I'd give you a cursory review of LB 389, but I ask your indulgence as I drone through each of the ten sections of this bill. Number one, Section 1 names the act the Health Care Prompt Pay (sic) Act. Section 2 is full of definitions, and I might ask you to pay...to look at, there are two...or three definitions. A clean claim, that's a claim for payment of healthcare services submitted to an insurer for payment of healthcare services on the insurer's standard printed or electronic transaction form with all those, all the fields completed. A prompt pay act compliance statement is a certification made in good faith by an insurer that during the two years prior to and preceding the June 30, that it paid, denied, or settled 90 percent of its claims within the approved time frames. There's a term called a "repricer," and a repricer is an entity. It's an outlier. It's not part of...it's not a provider. It's not an insurer. It's in the middle and they get in the way, I think, is the way you can best explain that. They receive the claims from the healthcare provider and submit them to the insurers, but in the meantime they fiddle with them and negotiate prices and get claims down as low as they can. And there's an unfair payment pattern and there are four things involved with that. One is an unjust pattern of receiving, reviewing, processing claims that result in payment delays; an unjust pattern of reducing the amount of payment and denying claims; repeated failing to pay the uncontested portion of a claim within specified amounts of time, and repeated failure to pay the interest on claims when due. Section 3 provides for presumptions regarding receipt of claims submitted electronically or by mail. Section 4 provides that a clean claim shall be paid, denied, or settled within 30 calendar days following the receipt by an insurer if submitted electronically, and 45 days if submitted by mail. If a claim resolution requires additional information, and frequently there is more

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information required, the insurer shall have...within 30 calendar days after the receipt, then they shall give the provider, the policyholder, the insured and patient a written explanation of the additional information that's needed. Then the person receiving a request for additional information shall comply within 30 days. After additional information is provided, the claim can be paid, denied, settled within the remaining applicable 30- or 45-day time period, and the insurer may deny a claim if a provider fails to submit additional information. Section 5 is a penalty section; provides that an insurer that fails to pay, deny or settle a claim, or take action within a specified amount of time will pay interest at the rate of 12 percent per annum on the total amount ultimately allowed on the claim, from the date payment was due. And Section 6 provides that an insurer may be exempt from insurance...interest, excuse me, when the insurer has a prompt pay act compliance statement on file with the Department of Insurance. Section 7: If an insurer delegates its claims processing to a third party--would be a claims administrator--the third party shall consent to examination by the director of Insurance and shall comply with this act. Section 8 is the teeth. This is...this is what makes this whole thing work. It says, first, that the director of Insurance will compile a record of notices from insured, representatives of insured, and healthcare providers acting on behalf of insured, related to unfair payment practices. So the department will keep a chronology and keep track of all complaints that it receives. Does not happen today. And then, secondly, if the director investigates and finds after a hearing that an insured or a third party has an unfair payment pattern, or the insured has falsely filed a prompt payment act compliance statement, the director shall issue a cease and desist order and may do one of these following things: The director could order payment of a penalty, not to exceed \$1,000 for each violation, and an aggregate of \$30,000. If the violation was flagrant, the payment will not be more than \$15,000 for each violation, not to exceed an aggregate of \$150,000. Those kind of dollars gain the attention of an insurance company. The director may also order suspension or revocation of the insurer's license or certificate of authority, and the director may withdraw the insurer's prompt payment act compliance statement. An insurer that violates a

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cease and desist order--this is a good one--would be subject to a penalty of not more than \$30,000 for each violation, not to exceed an aggregate of \$150,000, and the suspension or revocation of their license or certificate of authority. By the way, these penalties that are pulled out, they weren't just concocted. They came from the Unfair Insurance Claims Settlement Penalties (sic) Act, so they're not new to either the industry or the Department of Insurance. Section 9 excludes claims submitted before January 1, 2006. And finally, Section 10 authorizes the director of Insurance rule and regulation authority to carry out this act. Mr. President, that concludes my introduction. Thank you.

SENATOR CUDABACK: Thank you. Senator Mines, as Chairman of the Banking, Commerce and Insurance Committee, you're recognized to open on the committee amendments, AM0572.

SENATOR MINES: Thank you, Mr. President. Colleagues, the committee amendment, AM0572, amends Section 2 and Section 4. In Section 2 it rewrites the definition of a clean claim and inserts a definition for a new form, claim form, and that simply clarifies that if an insurer does not have a standard printed or electronic transaction form, then a provider shall submit a claim on a form that complies with standards issued by the Secretary of the United States Department of Health and Human Services. It also amends Section 4 to say that the applicable time period within which a clean claim shall be paid, denied, or settled shall be tolled, or timed out, from the date additional information to resolve the claim is requested by the insurer, until the date the additional information is received by the insurer. It also says that a clean claim does not include a claim for which the insurer needs additional information to resolve issues concerning coverage or eligibility, coordination of benefits, investigation of preexisting conditions, subrogation, determination of medical necessity, or the use of unlisted procedural codes. Finally, it does amend Section 9 to provide that the act does not apply to policies that provide coverage for a specific disease, accident-only coverage, or other limited benefit coverage, as well as hospital indemnity coverage, disability coverage, Medicaid supplement coverage, and long-term care coverage, Mr. President. Thank you.

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SENATOR CUDABACK: Thank you, Senator Mines. You've heard the opening on the committee amendments to LB 389. Open for discussion on those amendments. Senator Kremer, followed by Senator Redfield.

SENATOR KREMER: Thank you, Mr. President and members. I would like to rise in support of LB 389. As Senator Mines mentioned, I think I introduced this bill two and maybe three times, I'm not sure; twice while I was on the Banking Committee and I think even once last year. The players have changed somewhat. Some of the more guilty parties have done better job, and there's others now that are doing worse. But when we would go around and talk to hospital administrators or nurse practitioners or nurses, it seemed like there was always one theme, that it was costing a lot of money, because it took so long to get claims processed and to get their money back, which was costing a lot of money. And we all know what costs of healthcare are doing in the last few years, and if there's just one thing here that can help, it's something that's very profitable. You know what happens if you don't play...pay your insurance premiums on time, and then it turns around in the insurance companies. And many times, and we had read in the bill and it's that way now too, 30 days after a clean claim, and that can even take a long time to get a clean claim, because they'll just keep sending it back for something that isn't quite right. But we've said 30 days after a clean claim, if you did not pay it, then there will be some interest involved in that, and they still opposed that. So I just want to congratulate Senator Mines for the power that he has to get accomplished something that needed to be done for a long time. So thank you very much and I support your bill.

SENATOR CUDABACK: Thank you, Senator Kremer. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President. Members of the body, I do rise in support of the bill and the committee amendment as it is presented before you. In a nutshell, this is about paying your bills on time. It doesn't matter who you are. The bills need to be paid. If it is you going to a supplier and asking them to deliver a service to you in the medical field, they are going to expect that that copay is paid usually on the

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day when they deliver the services. They expect the bill to be paid on time. The insurer expects your premiums are paid on time, and I do believe that in fact the providers, whether they be the physicians, the labs, the hospitals or any other providers, have a reasonable expectation that they also should receive payment from the insurance companies on time. So I believe it's a reasonable approach. I want to commend everyone who was involved in working out the details. I believe that it showed good faith on all parts of our industry in this state, and I want to commend them for their good faith effort here, and I ask your adoption of the bill and the committee amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Hudkins, on the committee amendments.

SENATOR HUDKINS: Thank you, Mr. President. I do support this bill, but I would like to ask Senator Mines a question.

SENATOR CUDABACK: Senator Mines, would you respond to a question from Senator Hudkins?

SENATOR MINES: I will, Mr. President.

SENATOR HUDKINS: Senator Mines, are we apt to have some insurance companies--and we know how many of them are in Des Moines, Iowa--are we apt to have any of them say, we'll no longer do business in Nebraska?

SENATOR MINES: You know, that was a concern and part of our discussion. Insurance companies that are good actors, that provide...that provide a quality service, manage their product well, in the bill they're allowed to file with the department that they're in compliance, and the department...it's a get-out-of-jail-free card. So anyone that chooses to abide by Nebraska's regulations has very little oversight or regulation. They're almost self-certified.

SENATOR HUDKINS: Okay. So they can find...file a paper saying 90 percent of the time they pay in a timely fashion, right?

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SENATOR MINES: That's correct. It's called a prompt payment act compliance statement.

SENATOR HUDKINS: So those companies who are notorious for not doing this, what will they do?

SENATOR MINES: Well, they don't comply...if they don't comply and the Department of Insurance has been notified by customers, by the insured, by healthcare providers, they may then have a hearing. The director may call a hearing and issue sanctions, and could even withdraw their certificate allowing them to do business in Nebraska.

SENATOR HUDKINS: And then what would happen to those insureds if that would happen to that particular insurance company, if they already had insurance with that company and now they can no longer do business in Nebraska?

SENATOR MINES: I don't know that and I frankly don't believe it would come to that point, but the penalties and fines would be severe enough. Just the threat of this, we believe, is enough that insurance companies will promptly pay their bills.

SENATOR HUDKINS: All right. Thank you.

SENATOR MINES: That's a good question.

SENATOR CUDABACK: Thank you, Senator Hudkins. Senator Mines, there are no further lights on. You're recognized to close on AM0572, which are the committee amendments.

SENATOR MINES: Thank you, Mr. President. Again, this is the prompt payment bill that has been under discussion in this body for several years. We have...all corners are together. None of them are particularly happy about it, but I think maybe that's what makes good legislation sometimes. So I'd ask you to support AM0572.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the closing on the committee amendments. The question is, shall the committee amendments be adopted to LB 389? All in favor vote

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aye; those opposed, nay. The question before the body is adoption of the committee amendments offered by the Banking, Commerce and Insurance Committee. Have you all voted on the issue who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of committee amendments.

SENATOR CUDABACK: The motion was successful. The amendments have been adopted. Anything further on the bill, Mr. Clerk?

ASSISTANT CLERK: I have nothing further at this time.

SENATOR CUDABACK: Thank you. Discussion of advancement of the bill itself. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Mines, just a quick question. I'm trying to figure out the significance of filing the prompt payment act compliance statement, as outlined in Section 6, and I understand that that statement means a certain type of certificate made in good faith, as it's defined in the bill, indicating that for the 24-month period, starting at a certain time, that you settled all claims, all clean claims, more than 90 percent of them settled within the time periods of the bill. Okay, if I'm an insurer, do I have to file a prompt payment compliance statement, or I'm not required to file that?

SENATOR CUDABACK: Senator Mines.

SENATOR BEUTLER: I'd yield to Senator Mines.

SENATOR MINES: Thank you, Mr. President. Senator Beutler, you don't have to file for that certificate, but what it...but, by doing so, it's in your best interests as an insurer. Again, you're almost self-certifying yourself that you are responding to all the rules and regulations and the Insurance Department is giving you that free pass at that time.

SENATOR BEUTLER: It's the incentive part of it that I'm not...that I'm not quite understanding. It says that the

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insurer shall be exempt from the requirements of Section 5. That's the...is that...that is the only advantage of not filing the compliance statement?

SENATOR MINES: Yes, it is.

SENATOR BEUTLER: Okay. And Section 5 is the interest payment section?

SENATOR MINES: That's correct.

SENATOR BEUTLER: So if I don't file it then I'm subject to paying interest in the event I'm found not to have properly settled a clean claim. Is that right?

SENATOR MINES: I believe...I believe you're not subject to paying interest unless the department finds that you're not in compliance with the details of the prompt payment act compliance statement, at which time you then fall under those rules and regulations, and insurance can be applied...or insurance, interest can be applied.

SENATOR BEUTLER: Okay. So, for example, if I comply and I've...and my...and my compliance rate is 91 percent, then, even though I didn't settle a few clean claims on time, I'm not subject to the interest charge and that's the incentive.

SENATOR MINES: Yes.

SENATOR BEUTLER: Is that the way it works?

SENATOR MINES: Yes.

SENATOR BEUTLER: Okay. And if I don't file the compliance statement, whatever clean claim is found not to have been properly dealt with is subject to the interest payment.

SENATOR MINES: That's correct.

SENATOR BEUTLER: Well, it's very clever. All right.



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SENATOR MINES: I wish I could take credit, but...

SENATOR BEUTLER: Thank you very much.

SENATOR MINES: Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Seeing...any further discussion? Do not see any lights on, Senator Mines. Senator Mines waives closing. The question before the body is, shall LB 389 advance to E & R Initial? All in favor of the motion vote aye; those opposed to the motion vote nay. The question before the body is advancement of LB 389, offered by Senator Mines. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 34 ayes, 0 nays on the motion to advance LB 389, Mr. President.

SENATOR CUDABACK: LB 389 advances. Mr. Clerk, now we go to LB 389A.

ASSISTANT CLERK: Mr. President, LB 389A was introduced by Senator Mines. (Read title.)

SENATOR CUDABACK: Senator Mines, you're recognized to open on LB 389A.

SENATOR MINES: Thank you, Mr. President. Colleagues, the A bill is in response to a request from the Department of Insurance indicating that there will be additional work required in the department amounting to one-quarter of one person, and realistically we do ask the department...we just pile one thing on them after another, and they are asking for reimbursement for a quarter of a person and that would be in the amount of \$8,960. Would remind the body that this money doesn't come from our General Fund. It is the Department of Insurance Cash Fund that is made up of fines, penalties and fees paid by the insurance industry, so this doesn't come out of our fund. And I would ask the body to support LB 389A. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the

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opening, LB 389A. Open for discussion. Seeing nobody wishing to...Senator Mines waives closing. The question before the body is, shall LB 389A advance to E & R Initial? All in favor vote aye; opposed, nay. Voting on advancement of LB 389A. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 29 ayes, 0 nays on the motion to advance the A bill, Mr. President.

SENATOR CUDABACK: LB 389A advances. We now go to LB 193. Mr. Clerk, please.

ASSISTANT CLERK: Mr. President, LB 193 was introduced by Senator Thompson. (Read title.) The bill was read for the first time on January 7, referred to the Health and Human Services Committee. The committee reports the bill to General File with committee amendments attached. (AM0375, Legislative Journal page 589.)

SENATOR CUDABACK: Senator Thompson, you're recognized to open on LB 193.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. Hopefully, this one will have a little easier ride than the one that I had earlier this morning. There has been a compromise reached, and I'd like to thank Senator Jensen and Jeff Santema for putting that together. Just a brief history: The Crime Commission had a Juvenile Services Fund for many, many years, and in 2001 Governor Johanns proposed the Office of Juvenile Services having a fund to help counties get to the issues of prevention of juvenile crime and helping those counties in the planning for juvenile services and also for doing a better job with kids who have had troubles in the community and provide them with services and appropriate levels of sanctions for the types of situations they have gotten in, and also to help with treatment services that may be needed. At the time that the other bill was debated in 2001, we did have some discussion over whether to have two separate pots of money, and the Legislature did decide to go forward with that. We have also, as a Legislature, created a Coalition for Juvenile Justice that is asked to make recommendations to the Legislature

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annually, and this year they recommended putting the two sources of money together in the Crime Commission where the first fund was put and had been administered over the years. And with the committee amendment we will be doing that, and including the Office of Juvenile Services in those recommendations, but making the process streamlined and a little easier for those communities around the state to be able to move forward with their grant process. And that's essentially what it's about, but because the amendment becomes the bill, I will stop talking at this point so that the Chairman of the committee can tell you the exact contents that you'll be voting on. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. You've heard the opening on LB 193. There are committee amendments, as stated. Chairman of committee Jensen, you're recognized to open.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. And before I go into that opening, you know, each one of us, as we come to the Legislature, come with certain backgrounds and experiences, and Senator Thompson has long brought with her that interest in juvenile services and juvenile justice issues that I've certainly relied upon her as we worked together in Health and Human Services, and then she went over to that other committee for...and has been there since, in Appropriations. But any time I certainly had a question on juvenile services, I've always turned to her, and I'm really going to miss that. And I hope somebody picks up that mantle for carrying on juvenile services and juvenile justice for the state here. With that, I'll proceed to introduce the committee amendment, which does replace the bill, as introduced. The amendment, like the green copy of LB 193, relates to the County Juvenile Services Aid Program established under the Juvenile Services Act. The bill transfers provisions related to the aid program from the HHS Office of Juvenile Services, referred to as OJS, to the Nebraska Commission on Law Enforcement and Criminal Justice Commission. Section 1 of the amendment says that in order to participate in either the commission grant program or aid program, counties must develop and adopt comprehensive juvenile service plans. The bill requires counties to submit such plans to the commission, not OJS, according to the rules

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and regulations adopted and promulgated by the commission in consultation with OJS. Section 1 of the amendment also deletes absolute...or obsolete provisions related to allocation and planning grants to counties for the development of the comprehensive juvenile services plans. The commission, not OJS, but in consultation with OJS and the Nebraska Coalition of Juvenile Justice, must develop or contract for the development of a statewide system, monitor and evaluate the effectiveness of plans, programs funded by the grant program or the aid program in Section 1. The amended bill transfers the aid program from OJS to the commission, and deletes language that currently limits the annual General Fund appropriation for the program to \$4 million. The amount of funding available under the program is still dependent upon legislative appropriations. The amendment deletes and revises provisions relating to the distribution of funding under the aid program, and the aid must be appropriated to the counties based on a formula established by the commission in rules and regulations. The formula must be based on the total number of residents 12 to 18 years of age in the county and other relevant factors as determined by the commission. The commission may require up to 40 percent local match from the counties participating in the program. Local expenditures for community-based programs for juveniles may be applied towards meeting the match requirements, as in Section 2, subsection (2). The amendment expressly prohibits the use of funding under the aid program to replace existing funding for programs and services, as in Section 2, subsection (3). The amended bill requires the commission to adopt and promulgate rules and regulations to implement the aid program, as in Section 2, subsection (6). The amended bill becomes operative on July 1 of 2005, as in Section 3, and contains the emergency clause in Section 5. With that, that includes the introduction of the committee amendment. I'd ask for its adoption, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the opening on the committee amendments to LB 193. Open for discussion. Anybody wishing to discuss the committee amendments offered by Senator Jensen? Senator Burling.

SENATOR BURLING: Mr. President, members of the body, thank you

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very much. I'd like to ask Senator Jensen a question.

SENATOR CUDABACK: Senator Jensen, would you respond to a question?

SENATOR JENSEN: Yes.

SENATOR BURLING: Do counties now have a comprehensive juvenile services plan?

SENATOR JENSEN: Some do.

SENATOR BURLING: Do you know how many do, and would this be a hardship on the counties that don't, or...

SENATOR JENSEN: Senator Thompson is giving me sign language, and she surely knows more about this than I do. It would indicate there's seven? No. (Laugh) Senator Burling, perhaps you should ask Senator Thompson that question.

SENATOR BURLING: Okay. I'll do that. Mr. Chairman, Senator Thompson, please.

SENATOR CUDABACK: Senator Thompson, would you yield?

SENATOR THOMPSON: Sorry. I couldn't help you cheat in class, could I, I guess. I was trying to signal 33. (Laugh) But it looked like this, and it must have looked like 7 over there.

SENATOR BURLING: Thirty counties?

SENATOR THOMPSON: Thirty-three counties.

SENATOR BURLING: Thirty-three counties.

SENATOR THOMPSON: And...

SENATOR BURLING: So that leaves 60 that don't have a plan.

SENATOR THOMPSON: Yes.

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SENATOR BURLING: So is there a reason that they don't? Do 'you know why they don't, and would it be a hardship for them to do this to become eligible for this bill?

SENATOR THOMPSON: Well, they...the original bill had funding for that purpose and all counties are required to have one. We don't have a penalty in law for them, but they're supposed to have one.

SENATOR BURLING: Okay.

SENATOR THOMPSON: We passed that law a few years ago. A lot of this...a lot of these are very small counties and may just not have the...I think once larger counties get things going they will come into their service areas.

SENATOR BURLING: So are some...

SENATOR THOMPSON: The large counties pretty much all have it.

SENATOR BURLING: Are there any interlocal agreements in this situation?

SENATOR THOMPSON: Yes. Yes.

SENATOR BURLING: There is. Yeah. Okay. Thank you. Go ahead. Go ahead if you had something more.

SENATOR THOMPSON: Oh, I'm sorry. I said it the wrong way. Sixty have it and thirty-three don't, so don't ask me.

SENATOR BURLING: Thirty-three don't.

SENATOR THOMPSON: I don't know.

SENATOR BURLING: (Laugh)

SENATOR THOMPSON: But Doug Koebernick of my staff does.

SENATOR BURLING: Thirty-three don't.

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SENATOR THOMPSON: I read it wrong.

SENATOR BURLING: Okay.

SENATOR THOMPSON: Sorry. Thirty-three counties have not participated. I didn't read it right.

SENATOR BURLING: Okay. Thank you very much.

SENATOR THOMPSON: Thank you.

SENATOR BURLING: Return my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Burling. Further discussion? Senator Jensen, seeing nobody wishing to speak, you're recognized to close.

SENATOR JENSEN: I'll close and that goes to show why we need Senator Thompson here and why we're going to miss her in a number of counties. It also tells you that there are still some things that need to be done across our state. But I would urge the adoption of the amendment, which does become the bill. Thank you.

SENATOR CUDABACK: You've heard the closing on adoption of the committee amendments. The question before the body is, shall the committee amendments be adopted to LB 193? All in favor vote aye; those opposed vote nay. The question before the body is AM0375, offered by the Health and Human Services Committee. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of committee amendments.

SENATOR CUDABACK: Committee amendments have been adopted. Anything further on the bill, Mr. Clerk?

ASSISTANT CLERK: I have nothing further.

SENATOR CUDABACK: Back to discussion of advancement of the bill

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itself. Open for discussion. Seeing no lights on, Senator Thompson, you're recognized. Senator Thompson waives closing. The question before the body is, shall LB 193 advance to E & R Initial? All in favor vote aye; those opposed, nay. The question before the body is advancement of LB 193, offered by Senator Thompson, advancement to E & R Initial. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 37 ayes, 0 nays on the motion to advance the bill.

SENATOR CUDABACK: LB 193 does advance. Mr. Clerk, LR 2CA, when you get time.

ASSISTANT CLERK: Mr. President, LR 2CA is a resolution introduced by Senator Landis. It was read for the first time on January 6 of this year, referred to the Urban Affairs Committee. That committee reports the bill to General File. There are no committee amendments attached.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Landis is on his way, I understand. Mr. Clerk, items for the record?

ASSISTANT CLERK: Mr. President, amendments to be printed: Senator Synowiecki to LB 489, Senator Wehrbein to LB 227. (Legislative Journal pages 1055-1056.)

SENATOR CUDABACK: If Senator Landis is listening, please report to the Chamber. Your LR 2CA is up. We will pass over LR 2CA for the time being and go on to General File, 2005 senator priority bills. LB 273. Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB 273 is introduced by Senator Cunningham and others. (Read title.) Read for the first time on January 10, referred to the Government, Military and Veterans Affairs Committee. The bill has been considered on March 23 and March 30 of this year. The committee amendments were not adopted. When we left the bill, we were considering an amendment by Senator Beutler. This was FA118. (Legislative Journal page 989.)



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SENATOR CUDABACK: Senator Cunningham, we have been over this a few times, but if you'd give us a quick review on LB 273, we'd appreciate it.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. As you remember, this is a rural economic development bill that provides grants of up to \$75,000, and between collaborating political subdivisions. And it's a maximum of \$75,000. I envision most of the grants would be considerably less than that, in the neighborhood of \$5,000, \$10,000 and \$15,000. Required in this are matching funds from local businesses, local people, local subdivisions. There has to be matching funds for this. I'm going to...I think that pretty much gets them back to where we were. I'll talk a little bit later about more of the specifics, Senator. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham, for the review. Senator, would you like to review your FA118 before we start debating? Okay. We will go right to the debate of the issue, FA118, offered by Senator Beutler to LB 273. Open for debate. Senator Chambers, followed by Senator Beutler. Senator Chambers, you're recognized to...you're recognized.

SENATOR CHAMBERS: Is this my amendment?

SENATOR CUDABACK: This is Senator Beutler's FA118 to LB 273, Senator Chambers. Your light was on. That's why I'm...

SENATOR CHAMBERS: Thank you. I'm getting oriented now. I was on Senator Landis' measure...

SENATOR CUDABACK: Sorry, passed over that.

SENATOR CHAMBERS: ...and it wasn't working with what's on the gadget, but you brought me back to reality and I appreciate it. Thank you.

SENATOR CUDABACK: You're welcome.

SENATOR CHAMBERS: Members of the Legislature, Senator Beutler is trying to bring a silk purse out of a sow's ear, so I'm not

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going to stand in the way of that. I will see what his amendments can do as far as making this bill less objectionable. However, there is a grim reality. I've talked to some of the senators who could be considered rural senators who don't agree with this bill. So I don't know how much time I ought to give in trying to batter it. If the rural people feel like this is what they want, let them have it, but I will not support another measure that relates to rural economic development this session. This is one of those times, and I don't always do it, when it's going to be my way or no way to the extent that I can make it that way. This bill is not worth the amount of effort that has gone into it thus far. If it happens to be enacted into the law, into law, and if the Governor signs it, the rural people have got nothing. So this is the deal that you make with this devil. Take LB 273 if you can get it, and then everybody else who has one of these so-called rural redevelopment bills, get ready to get 33 votes on every one of them. That's the deal that I offer. I'd like to ask Senator Cunningham a question, now that Mephistopheles has spoken. In case, Senator Cunningham, that name throws you off, because it will some people, there's a young man named Christopher Marlowe. He was killed, they say, in a bar fight in his early or mid-20s. He got stabbed in the eye, and some people think he was assassinated. Nevertheless, he did croak. But he wrote The Tragical History of Dr. Faustus, who was approached by Mephistopheles, a representative of the evil one, not the evil one himself; told him he would give him anything he wanted for a period of years, but in exchange he had to give him one slightly soiled, used soul. And Dr. Faustus agreed, and he was able to be transported anywhere in the world, any wish he wanted he could have granted. He wanted to see Helen of Troy, and he did. Is this the face that launched a thousand ships, and so forth. When time came to pay off, he did not want to pay off. Now, I'm, for the sake of the analogy, Mephistopheles. You, for the sake of the analogy, are Dr. Faustus, a very learned doctor, competent in many disciplines. It's not just your soul today that's at stake, the soul of your rural colleagues. Are you prepared to deal with Mephistopheles on this issue?

SENATOR CUNNINGHAM: I think I am, Senator.

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SENATOR CHAMBERS: You're prepared to take LB 273 and risk your soul and the souls of your fellow rural senators...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...in exchange for maybe having a chance to vote on LB 273? Do I understand you and do you understand me?

SENATOR CUNNINGHAM: Yes, I do.

SENATOR CHAMBERS: And you're prepared to accept that deal?

SENATOR CUNNINGHAM: Well, I'm not saying I accept it as a deal. I'm actually hoping that we can change your mind later, but maybe not.

SENATOR CHAMBERS: We didn't talk about hoping, wishing, hoping, praying and thinking. We're talking about a deal. And Mephistopheles wants you to sign on the dotted line. The deal is that you'll get your vote on LB 273 and you can pass LB 273, if you can, without any interference from me beyond this point. But I try to do everything I can to kill every other rural economic development bill that comes through. Is that okay with you?

SENATOR CUNNINGHAM: Well, it's not okay with me, but I guess if that's what you're going to do, that's what you're going to have to do. I apologize for that, but I...

SENATOR CHAMBERS: Going, going, done. You can have your LB 273 as far as I'm concerned, and you can fight like the devil for the rest of them.

SENATOR CUNNINGHAM: Thank you.

SENATOR CUDABACK: Time, Senator Chambers. Mr. Clerk. Senator Beutler.

SENATOR BEUTLER: Yes. Senator Cudaback, at this point in time, I would withdraw FA118 and substitute for it AM1022, and then I would withdraw all other amendments I have on file.

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SENATOR CUDABACK:    Is there any objection?    So ordered.    Is substituted.    Mr. Clerk.

ASSISTANT CLERK:    Mr. President, Senator Beutler would offer AM1022.    (Legislative Journal page 1056.)

SENATOR CUDABACK:    Senator Beutler, to open on AM1022.

SENATOR BEUTLER:    Senator Cudaback, members of the Legislature, I had indicated to Senator Cunningham earlier that it was a long trek for me ever to be convinced of the correctness of the philosophy of this particular bill.    But I also sat down with him and indicated to him that I would consolidate the amendments that I had and compromise with him on a couple of issues, and file them all as one amendment, and see what you all thought of it.    So this is an amendment that I believe Senator Cunningham is at least reconciled to, if probably maybe even agreeable to.    And here's what's included.    First of all, with regard to three or four of the different descriptions in here which are broad in nature, the word "business" is put in front of them, so that we're talking more directly about business enterprises and not just any type of enterprise.    The entities that can be involved in this are all political subdivisions under the bill.    It would be limited under this amendment to municipalities and counties.    The descriptive material "chronic economic distress" is...replaces other language in the bill so that it's clearer what is intended and what is meant by chronic economic distress.    Then with regard to the grants, the five-year...the ability to string a grant out for five years is limited to two years.    And finally, again, the scattering of the benefits across all political subdivisions is limited to municipalities and counties.    So those were the things that I had suggested that were agreeable to Senator Cunningham, and we would recommend those to your attention.

SENATOR CUDABACK:    Thank you, Senator Beutler.    You've heard the opening on AM1022 which is an amendment to LB 273.    Open for discussion.    Senator Johnson.

SENATOR JOHNSON:    Thank you, Mr. President.    With the long

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discussion the other day, I got to thinking about really where are we going with economic development? We have any number of bills that have been supplied to us in more or less of a piecemeal manner. Well, I'm going to suggest today for our consideration...and this is not meant as a bill. It's not meant as an amendment, but I think it's very worthy of discussion, and that's this: For rural economic development, why not build a new interstate? This isn't really a new concept. Congressman Doug Bereuter and our own Senator Matt Connealy have sponsored some such legislation that we called the expressway system. Why was I-80 successful? Because it goes from point A to point B in a relatively short distance. Two, it goes along a line from point A to point B with major population centers: Omaha, Lincoln, Hastings, Grand Island, North Platte. Three, people want to go from point A to point B and from point B to point A. Furthermore, people want to go beyond point A and they want to go beyond point B. I-80 is highly successful. What we really need for economic development is a second interstate, not just anywhere, but by the principles that I just outlined. There's one place where this can be done. It runs from Highway 81 south of York through Columbus to Norfolk. Here is the question. Do we once more do as we've always done and just keep going up Highway 81 to a place where's there is no population, no cars traveling, or do we turn this road and make a new road directly to South Sioux City? At South Sioux City, you have I-29. Minnesota is building Highway 60, a four-lane system from the Twin Cities and the rest of Minnesota and Wisconsin, and Highway 20 also empties into this area, coming across from northern Illinois and Iowa. All of this traffic comes to South Sioux City, Nebraska. What do we do now? We keep them out of the state of Nebraska as long as we can. Why not invite them into the heart of Nebraska, coming from South Sioux City and down the Highway 81 expressway? I can think of no other...

SENATOR CUDABACK: One minute.

SENATOR JOHNSON: ...economic development package that we can possibly think of in this body that will have the economic impact that this will. I had a rough study made by my office and with the completion of this, roughly 92 percent of the people in Nebraska will be within 30 miles of this system.

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There's many reasons besides this. It would go by Wayne State university, or Wayne State College. But the important thing is that basically this creates an interstate corridor similar to the most successful economic development in Nebraska. If there is a better economic package, I would like to hear any discussion regarding it. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Johnson. Further discussion, Senator Flood.

SENATOR FLOOD: Thank you, Mr. President and members. Thanks to the good senator from Kearney's comments, there's a smile from Norfolk to South Sioux City this afternoon, because he touched on rural economic development at its finest. We've been talking about this issue for years in northeast Nebraska, and Senator Johnson may look as though he may be a disinterested party, but actually it's quite different than that. This not only builds northeast Nebraska from South Sioux City to Norfolk, but from Norfolk to Columbus, Columbus to York, and then everybody west of York on I-80 will benefit from a project like this. Rural economic development done right costs money. I appreciate Senator Cunningham's efforts, I support his bill. He's working for everything we can, but Senator Chambers has said over and over if you want to do it, let's find something that you think would make the biggest, you know, the biggest impact, and this would do that. In August of 2000, the Wilmer Smith Associates drafted a report to the Nebraska Department of Roads stating that the total economic development impact of a four-lane from South Sioux City to Norfolk exceeds \$217 million annually. For every \$1 invested in the Highway 35 expressway concept, northeast Nebraska, just northeast Nebraska, would see \$1.86 return in economic benefits. The Norfolk Chamber of Commerce has been active making this an issue, but Senator Johnson raised an excellent point. As you see the map in front of you there, you connect a corner of the state that does not enjoy the benefits of a four-lane highway except from Norfolk to Columbus, and you connect an entire corridor. And I believe if Senator Johnson is available, I would wonder if he would yield to a quick question. Senator Johnson, you and I were talking and I can't remember, but if I recall correctly, if this corridor was to be built from South Sioux City through Norfolk

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down to York and connect to I-80, what percentage of the Nebraska population would be within 30 miles of a four-lane road?

SENATOR ENGEL PRESIDING

SENATOR ENGEL: Senator Johnson, would you yield?

SENATOR JOHNSON: Yes. What we...I had the people in my office do a rough study, and what it basically came down to is that about...well, it's over 90 percent of the people would be within 30 miles of a four-lane road.

SENATOR FLOOD: Thank you. That makes this point very clear for me. A four-lane expressway from Norfolk to Sioux City makes sense. It connects our corner of the state. It's only \$130 million, and I'm sure Senator Pederson from North Platte is enjoying this conversation. But if you want to talk about responsible and economic development that benefits the citizens of the state of Nebraska in the rural areas, this will do that. I return the balance of my time to the Chair. Thank you.

SENATOR ENGEL: Thank you, Senator Flood. We recognize Senator Fischer.

SENATOR FISCHER: Thank you, Mr. President. Senator Flood, I think if you put a four-lane highway in there, they're just going to drive through faster. But to get back to LB 273, I've listened to the debate on this for a number of days now, and I've heard some senators say that we need to have a comprehensive economic development plan and not a number of these piecemeal plans for rural economic development. Being new here and not having been a part of previous discussions over the years when you've dealt with economic development, I can only surmise that rural economic development has been left out of those previous discussions and those previous bills. And that's why we have to beg for crumbs here, as Senator Chambers has so eloquently said. We've been left out of the bills that have provided opportunities and I'm borrowing a well-known phrase here, we've been left out of those "to grow Nebraska." Why is that? Why do we have to have bills that address the specific

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needs of the more rural areas of this state? And then when we come up with these ideas, these bills are called piecemeal. They're called unrealistic, they're called inefficient, and they are deemed as being not effective. Okay, let's look at LB 273. And again, Senator Flood and Senator Johnson, I apologize for getting off the highway bill, but let's look at LB 273. The intent of this bill is to support economically depressed rural areas in Nebraska by providing them with the mechanism that will create a community capacity to build and to sustain programs that will assist in creating businesses, maintaining those businesses, and transferring those businesses to other owners in the community. In short, the proposed grants would help communities learn how to help themselves. Most communities won't learn how to efficiently build capacity without outside funding and assistance. LB 273 is a mechanism to help move communities towards business development. An example was given at our committee hearing on this bill. If a committee...or if a community decides it needs to attract technology-driven entrepreneurs, it could hire a technology expert to do an assessment of the infrastructure, then development and implementation of the desired plan. It was said that Nebraska offers some excellent resources, but the testifier also felt that there is a weakness in the ability to identify community needs and assess the resources to meet those needs. LB 273 can help to develop the linkage between community needs and available resources. By having two or more political subdivisions work together, and I think this is important...by having two or more political subdivisions work together and by having communities choose which subdivision should work together, based on the different dynamics in each individual community, that's a plus of this bill and of this program. I believe it's a benefit that the local leaders in our small communities would be committed to making these projects work. The communities must demonstrate that they are ready to receive help, and they must apply as a collaboration. And they have to provide a dollar-for-dollar match for the grant funds they receive. Entrepreneurship drives economic growth. Entrepreneurship creates community-based leadership. I think that's a point many people have missed in this bill.

SENATOR ENGEL: One minute.



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SENATOR FISCHER: I'm sorry. Thank you. There were four legislative proposals to provide entrepreneurship opportunities presented this session. LB 71, Senator Stuhr's bill, provides grants to farmers and ranchers to add value to their products. We've had \$1 million allocated for that. The Governor's proposed budget in the Appropriations Committee's preliminary recommendations provides a \$250,000 increase for Microenterprise Partnership Fund. LB 309 provides an investment tax credit for starting and growing "microbusinesses." That would allocate \$2 million, but that's still in the Revenue Committee. And then we have LB 273 which provides grants to the communities, and I hope we can put \$1 million, at least, into that. Fully funded, these proposals benefit the entire state, and they cost less than 4 percent, people. They cost less than 4 percent...

SENATOR ENGEL: Time. Thank you, Senator Fischer. The Chair recognizes Senator Cunningham. Senator Cunningham waives. The Chair recognizes Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. I stand in support of Senator Beutler's amendments. I think those are something that will probably really help the bill, to clarify changing that political subdivisions, particularly to cities or counties, and also changing the length of the grant process from five years to two years. I think it was interesting to hear the discussion on the road construction, looking at that four-lane highway. I can tell you from York to Mexico...I was at the dedication when we finished the stretch in, around the York area. We do have a four-lane highway now that does run from York to Mexico. Yes, we need to continue to work on the other portion in the rest of the state. But this bill has nothing to do with that. This bill has to do with retaining businesses and providing some leadership training to these communities, particularly in the area of entrepreneurship. And I wanted to share just something that our representative, Congressman Osborne, has been working on this area throughout the state, and one of the things he says is fostering entrepreneurship is the key when it comes to retaining the next generation, pointing out that in order to have the same quality of life, let's say in Columbus, making \$35,000, one would have

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to make \$111,000 in New York City. What I'm saying is, the whole point of this bill is trying to provide some opportunities, to retain our young people to come back to these communities and...but we need community support. We need the development of some of these leadership projects, building leadership. We need to do it locally. This would provide some grant money. They would have to do also some matching grant money. We talk about all of these programs. These programs do cost money to bring to the communities, and that's what we're trying to say. It isn't a lot of money, but \$25,000, \$10,000, it does help, particularly if it is matched. You know, we get criticized in...the rural senators. First we do nothing, and then we bring bills and now we're getting criticized because we're bringing too many bills. I think what we need to do is adopt the amendments, move the bill on, and I think we're all willing to sit down and look and how, you know, what...what are the programs that we really need. But these are successful. They...we do need the leadership, we need the entrepreneurial training. We need to bring those communities and attach those resources so that these young people have some opportunities to come back. I think I shared with you yesterday that 85 percent of all the businesses in Nebraska are small businesses. I mean, that is something that we really have to think about, not only building new businesses. We'll never get those large businesses in rural Nebraska. We know that. I mean, I'm talking about some of those small communities. But if we can retain those businesses, that's really what we're talking about. And maybe adding one or two people, as we said, brings another family in, brings some more children into the community, and so then we grow. And with technology, this all ties things together that we didn't have those opportunities before. Again, I know some people have said...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR STUHR: ...this is a duplication. Nebraska...we talk about this in our school systems. Nebraska is a very diverse state. It's a very large state. And what program might work well in one community may not work as well in another. So we

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don't just have one program, but a variety, and we're not talking about spending big, big dollars. But what I'm saying is that this is a program I think that will be very beneficial, particularly where it's targeted to those depressed areas and those counties that are losing population. Those communities can work with their counties, can work with another city and partnership and try to bring something and make something happen. We need to grow Nebraska. I can tell you that this investment will more than double. I mean, I can't even tell you what an investment like this can bring in the future, but we have to be willing...

SENATOR CUDABACK: Time, Senator Stuhr.

SENATOR STUHR: ...we have to be willing to risk and do this. Thank you.

SENATOR CUDABACK: Thank you. On with discussion of the Beutler amendment. Senator Engel, followed by Senator Smith and others.

SENATOR ENGEL: Mr. President and members of the body, I do support the bill as written. They're talking about a small amount of money, \$75,000 max and there'll probably be awards for less than \$75,000. But there's so many small companies, small entrepreneurs who want to get started, where they need seed money. But they also have to come up with matching funds. So it's not just a giveaway program. It's not a giveaway program at all. But many of our very, very successful companies in this country and in Nebraska have started in a garage and with very, very little money. So this little bit of money really does count in some industries and in some areas. So I totally support the bill. But I also want to make some comments on the Highway 35 project. I do live in South Sioux City and, over the years, they have I-29 comes up from Omaha, right straight past Nebraska, and there is a...there's been a bypass, four-lane bypass built around Sioux City, Iowa, four-lane to Le Mars, Iowa, and they're working on Highway 60 that continues on from there up to Worthington, Minnesota, and that will be completed in the next few years, so there is a conduit then, when that's completed, all the way to the Canadian border; Minneapolis, primarily, and then on up. And then Highway 20, coming across

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Iowa, is being four-laned, and that comes right into South Sioux City, Sioux City area right there. And so it converges there, I-29. So if we get that Highway 35 corridor from South Sioux City to Norfolk, then you'd have a conduit, an expressway from Canada clear to the Mexican border. And there's so many truckers and so much transportation that has to go out of their way to get to where they want to go, and this would be so good...great for our area. Economic development, you'd be surprised what will happen along that corridor if we get this through. There's already been government funds made available through Senator (sic) Bereuter and our new senator. And as far as for studies, there are already two routes that they've spent a lot time studying as far as for that route between South Sioux City and Norfolk, so it's just a matter of time that it will occur. But the sooner it occurs, the better off we'll be. We have to bring more businesses into Nebraska, and as we talk about all of the programs we have going and what we want to have going, is we have to create an atmosphere and where people want to come into Nebraska. We have to create...transportation is a big part of that, a very big part of that. So if that's built, I know you'll see, just like on Highway...on Interstate 80, you'll see all kinds of businesses cropping up. So I think it's very, very important that we pursue this, also. But again, I do support the bill itself. Thank you.

SENATOR CUDABACK: Thank you, Senator Engel. Senator Smith, followed by Senator Landis.

SENATOR SMITH: Thank you, Mr. President and members. This discussion, I think, has gotten very interesting and how we can pay for highways with half a million dollars, I think, or something to that effect. But I was especially intrigued by Senator Johnson's mention of bringing people to Nebraska. And I was wondering if Senator Johnson would yield to a question or two.

SENATOR CUDABACK: Senator Johnson, would you respond?

SENATOR JOHNSON: I'll try.

SENATOR SMITH: Yes, Senator Johnson, I apologize. I really

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wasn't expecting the topics you mentioned before you brought them up, so I apologize that some of these questions have just come up. But you mentioned that you're in support of this project of a four-lane. Then I heard that there was a price tag of about \$130 million. Is that accurate?

SENATOR JOHNSON: I think so, sir.

SENATOR SMITH: Okay. And if we could parse that down just a bit, and if we could bring roughly, and I would say conservatively speaking, 100,000 people through Nebraska during one week in August, what do you think that would be worth?

SENATOR JOHNSON: Are they going to be wearing helmets or not?  
(Laughter)

SENATOR SMITH: That would be their personal decision, Senator Johnson.

SENATOR JOHNSON: Now, what is your question?

SENATOR SMITH: How much do you think it would be worth to bring 100,000 people to Nebraska on discretionary pieces of equipment that costs roughly \$20,000 apiece?

SENATOR JOHNSON: I have no idea. Would you tell me?

SENATOR SMITH: Yes, I would. (Laugh) But I get your point and perhaps you get mine, as well. But I think actually Senator Johnson's discussion is relevant to economic development across the state. What are we doing in the bigger picture to bring tax dollars to our state? We are being faced with various issues and I just hope that we can all have an open mind in terms of information and the impact across Nebraska. I was given some propaganda, and that's being generous, about the various proposals regarding economic development and in particular my priority bill, that being LB 70, mischaracterizing it, not using all the accurate facts. And a member of the lobby, he stood by those, and then got a little bristled up and I thought it better that we not continue our discussion. But we need to look at the bigger picture. I know we can throw in emotional issues and we

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can be territorial about it, whether it's our profession or not, but when we look at the big picture, we need to look at what other states are doing, how do we fit in with that. And I think we can turn this into a win-win scenario, regardless of whether it's LB 273 or, quite frankly, LB 70, that does bring about public safety in light of economic development across Nebraska and not those communities...not only those communities straight south of Sturgis, South Dakota. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Mr. Clerk, items for the record, please.

ASSISTANT CLERK: Mr. President, I do. Amendments to be printed to LB 709 from Senator Beutler; an announcement that Judiciary will meet in Executive Session upon adjournment in Room 1113. Name adds: Senator Friend to LB 542; Senator Synowiecki, withdraw from LB 709. (Legislative Journal pages 1056-1057.)

Mr. President, I do have a priority motion. Senator Bourne would move to adjourn until Friday, April 1, 2005, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn till Friday, April 1, 9:00 a.m. All in favor say aye. Opposed to the motion say nay. We are adjourned.

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